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No. 82-714

IN THE

Supreme Court of the United States

October Term, 1982

JOHN SEATH,
Petitioner,

v.

REGULATIONS AND PERMITS ADMINISTRATION,
Respondent.

ON A PETITION FOR A WRIT OF CERTIORARI FROM THE SUPREME COURT OF PUERTO RICO

PETITION FOR CERTIORARI

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The Questions Presented For Review.

I. Whether Petitioner's interests in an agency use permit is a "property interest" which could not lawfully be confiscated by Respondent without due process.

II. Whether Respondent violated due process by denying Petitioner a hearing mandated by statute and guaranteed under the United States Constitution's First, Fifth and Fourteenth Amendments.

III. Whether, after Respondent initiated an Injunction Petition, resolved against it and appealed, it could reach an administrative decision in conflict with the judicial order *sub judice* without a hearing to receive evidence or the grounds used for denial, without violating Petitioner's constitutional and statutory due process rights.

IV. Whether the decisions below violated (a) due process under the Fifth and Fourteenth Amendment of the United States Constitution and (b) meaningful access to the Court under the First Amendment by the Court granting validity and finality to an illegal and null administrative decision, which was not even subject of review in the Court procedures held simultaneously with the administrative proceedings.

V. Whether an important question of due process pertaining to Petitioner's right to fair hearing before being deprived of constitutionally protected property interest has been decided below in a manner which conflicts with applicable decisions of this Court.

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ON A PETITION FOR A WRIT OF CERTIORARI FROM THE SUPREME COURT OF PUERTO RICO.

PETITION FOR CERTIORARI.

The petitioner John Seath respectfully prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Puerto Rico entered in this proceeding.

*Alberto del Toro, *et als* intervened in the District Court proceedings and petitioned for review and Certiorari at the Superior Court and Supreme Court levels. Since due process constitutes our grounds for a Writ of Certiorari, being private interested parties, they have not been made formal parties of our Petition.

Judgment Order Below.

The Judgment Order of the Supreme Court of Puerto Rico is not officially reported; it is translated in the Appendix A.

Jurisdiction.

The Judgment Order of the Supreme Court of Puerto Rico was entered on June 30, 1982. A timely petition for rehearing was denied on July 22, 1982. Appendix B. Petition for Certiorari was filed within 90 days of that date although a clarification regarding the finality of the Judgment Order was filed and denied on September 8, 1982. Appendix C. This Court's jurisdiction is invoked under 28 U.S.C. Section 1258.

Constitutional Provisions Involved.

Amendment I. Constitution of the United States.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging freedom of speech, or of the press; or the rights of people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment V. Constitution of the United States.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual services in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV. Constitution of the United States.

Section 1. Citizens of the United States.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statement of the Case.

The following pertinent facts were found by the District Court of Puerto Rico (Appendix D) after holding a hearing and a sight inspection under the special procedure providing for injunctive relief in Article 28 of Act No. 76 of June 24, 1975, as amended (23 LPRA Sec. 72).

1. On February 8, 1978, RPA issued to Mr. John Seath a use permit to operate a bar-restaurant in the first and second floor of the building at issue. Said building is owned by the Puerto Rico Industrial Development Company (PRIDCO) and leased to Petitioner, d/b/a Le Chatelet, Inc., on June 15, 1977.

2. The referred to building is located in district C-3 according to the Zoning Map of San Juan. In C-3 districts, commercial uses are permitted. The permit granted to Mr. John Seath was in conformity with district C-3.

3. Under said permit, Petitioner operated a restaurant, a bar, and a dancing pit already present in that premise, where live music was played. No complaints were filed nor is there evidence that while Petitioner operated his business with live music he would be violating RPA's regulations.

4. To benefit from the disco fad boom that took place around that time, Petitioner modified his bar and dancing pit into a discotheque, under the belief that it was in conformity with his use permit. The modifications introduced as arise from the findings in Appendixes D and E involved minimum structural changes for acoustic and privacy purposes; its main change consisting in the interior decoration of the premises, done in good taste and involving a large sum of money. Appendix D, paragraph 10, 12. In the exterior of the building ornamental awnings on the entrance doors and planters were placed. Appendix D, paragraph 11.

5. On June 30, 1978 John Seath applied to RPA for a modification of his use permit. On July 5, 1978 RPA objected the use permit pending the receipt of four endorsements. (No time limit was given to Petitioner for compliance).

6. Notwithstanding the fact that licensing administrative proceedings were pending before RPA, the latter filed an Injunction Petition under Act No. 76, *supra*, alleging that Petitioner was operating a business without obtaining the corresponding use permit; and in the benefit of the public interest requested immediate paralyzation of said use. Petitioner opposed the temporary restraining order since it would cause irreparable damages consisting in his economic ruin and the unemployment of at least fifteen persons. The TRO was denied by the Court and a hearing was scheduled for September 18, 1978. Besides the parties in the controversy, the District Court allowed the intervention of a group of residents of San Juan. A full hearing took place, and the Court conducted an on-site inspection of the facilities on September 19, 1978.

7. The District Court found that in remodeling, no structural changes were made to the building, but only a redecoration that made it more attractive; that the conditions imposed by the Fire Department had been met as well as the conditions of the Health Department. The endorsement of the Institute of

Culture was missing but said agency had no jurisdiction regarding the interior of the buildings as per their own communication and therefore its endorsement would involve only the exterior of the building. The on-site inspection also demonstrated that the musical sound of the electronic equipment was not heard outside nor was it a nuisance. The Court pointed out that across the controverted building the El Convento Hotel was operating.

8. As a matter of law, the Court found that there was a change in use because restaurants and bars fall under Paragraph 36, while commercial recreation falls within Paragraph 34, but both uses *are allowable under Zone C-3.* It concludes that in order to operate permanently as a discotheque, a use permit from RPA must be obtained, but that since Petitioner had substantially complied with the agency's requirements, RPA's Administrator could, under Article 10, dispense Petitioner from full compliance in cases where the literal application of the regulations' provisions would result in the prohibition or the unreasonable restriction, of the enjoyment of a property and said immunity would alleviate a clearly demonstrated damage, retaining the discretion to impose any conditions for the interest of the public welfare. He denied the permanent injunction and remanded the case to the agency for action in conformity to the Court's recommendations. In the meanwhile, the Petitioner should submit the missing endorsement.

Thus, end the findings of the Court used in this Statement of the Case. The rest finds support in the record.

Immediately after the Court's Resolution, Petitioner removed the awnings and flower beds which were the only exterior changes to the buildings.

Both RPA and the intervenors appealed the District Court's Resolution before the Superior Court of Puerto Rico, San Juan Section, on or about October 25 and 5, 1978, respectively. RPA's position can by synthesized as questioning the court's jurisdiction to entertain any fact-findings and questions of law

that were of agency primary jurisdiction, to abrogate functions of the Superior Court for the review of administrative decisions without exhaustion of the administrative proceeding, and to invade the Administration's powers. Since it was RPA who filed the action in Court, evidently *the basic contention was that the court only had authority to grant the Injunction.* The intervenors echoed RPA's allegations praying for the paralyzation of the business while the administrative proceeding took place.

While this appeal was *sub judice,* RPA without following the statutory requirements provided for in Article 7 and/or Article 25 of Act No. 76, *supra,* mandating a prior hearing before any adjudication, decision or resolution can be made, denied the use permit on December 15, 1978. Appendix F. RPA disregarded unilaterally the recommendations of the District Court still object of review by the Superior Court. It held no prior hearing to its determination. Furthermore, the basis for its determination was that according to Article 9 of its organic act the Administration could deny any application for use permit in any district or zone when required by "special characteristics that would make impracticable the application of the regulations' provisions on the subject because of the protection of the general welfare, and taking into consideration such factors as health, security, order, defense, economy, population, lack of facilities or communications, adequate use of the land or environmental conditions, aesthetic or exceptional beauty."

We fail to understand how RPA could have made applicable Article 9 to John Seath without receiving evidence to any of the extremes hereintofore mentioned at a public hearing as mandated by law. Said Article 9 (b) expressly requires a hearing prior to any determination. 23 LPRA Sec. 71(h).

On December 29, 1978 Petitioner requested a rehearing of the decision and also specifically requested a public hearing because his constitutional rights under both the United States and the Commonwealth of Puerto Rico Constitutions had been violated. Appendix G. No action was taken by RPA except that

on May 11, 1979, still pending the Review of the District Court resolution, RPA again notified John Seath that he was operating a discotheque without a permit but without giving him notice of the hearing requested. On June 6, 1979, John Seath filed a motion in RPA informing of the pending action at the Appellate Court and requesting an abeyance of any administrative action in conflict with the judicial action then *sub judice*. The Superior Court was also notified of said motion as of the same date. Appendixes H and I.

On May 28, 1980 the Superior Court of Puerto Rico dismissed the appeal on the basis that the District Court's resolution was not final and therefore not appealable. However, it further provided that should it be considered final, it would affirm the District Court's resolution, discussing in detail the authority under injunctive proceedings by the Courts. Appendix J.

On June 6, 1980 the intervenors petitioned for Certiorari from the Superior Court's judgment before the Supreme Court of Puerto Rico. RPA did not participate in the Certiorari proceedings. Obviously, it had decided, even prior to the Superior Court judgment, that it would disregard the District Court's judgment and make its administrative decision without giving John Seath the opportunity to be heard. That the denial of the license had been already predetermined is a fact that clearly arises from the record. John Seath did not appeal to the Appellate Board of the agency from the Administrator's decision. But, he actively participated in the court proceedings at great expense realizing the futility of pursuing the Administrative Forum. He did file an opposition to the Certiorari Writ on July 10, 1980. Thereinafter, the Supreme Court issued three resolutions dated November 4, 1981, December 22, 1981 and May 27, 1982, addressed at the District Court of Puerto Rico to update the factual situation in this case. Appendixes K, L, M. In compliance with said Resolutions the District Court held a chambers conference whereby certain stipulations of facts were made by the parties' attorneys. Appendix N.

On June 30, 1982 the Supreme Court of Puerto Rico not only annuled the Superior Court judgment and remanded the case to the District Court, but in addition held that the administrative decision which was not on review under the procedure established by Article 31 of Act No. 76, *supra*, was final and firm. A rehearing motion was filed by Petitioner on July 8, 1982 (Appendix N) but was denied on July 22, 1982.

Because the Supreme Court was giving a finality status to a decision of an administrative agency that had not been subject of review by the Superior Court, and since the Superior Court's judgment was drafted in the alternative method; on the one hand holding that the District Court's resolution was not appealable, but on the other hand stating that should it be appealable it would affirm it, we responsibly requested from the Supreme Court of Puerto Rico a clarification of the judgment upon being retained as Counsel of Petitioner before this Honorable Court as arises from Appendix O. Said motion was denied on September 9, 1982.

Reasons Relied on for the Allowance of the Writ.

1. Petitioner had a constitutionally protected property interest in the use permit to operate his livelihood business, which could not lawfully be confiscated by Respondent without due process under the Fifth Amendment.

Although the Fifth Amendment of the United States Constitution does not define "property", the judiciary has developed through the years a clear body of case law to guide us in the interpretation of the elusive concepts of property, due process, and other related protected rights. The due process concept of property has been broadened to encompass more than ownership of physical property. *Board of Regents of State Colleges v. Roth*, 408 U. S. 564 (1972). On the other hand, some courts have been reluctant to impose full due process considera-

tions in every case in which individuals or businesses are affected by agency action unless the right to be protected falls squarely within the meaning of "life, liberty and property" as encompassed in the due process clause. *Gart v. Cole*, 263 F. 2d 244 (2d Cir. 1959), cert. denied 359 U. S. 978. Thus, on the issue of whether there has been a deprivation of property under the Fifth Amendment, the Courts have looked into the statutory requirements for aid in constructing whether the entitlement alleged should be regarded more as "property" than as a "gratuity". In *Goldberg v. Kelly*, 397 U. S. 254 (1970), this Honorable Supreme Court held that welfare payments could not be terminated by a state agency without a prior hearing. Consequently, governmentally created property interests cannot be interfered with unless due process protections are adhered to. *Goss v. Lopez*, 419 U. S. 565 (1975). In this case, this Honorable Court held that as long as the property deprivation is not *"de minimis"*, due process requires a right to a hearing (at 576).

Petitioner Seath has a statutorily created right that squarely falls within the constitutional protection of property and its deprivation constitutes a "taking" without due process of law.

A license is a grant by a governmental authority of the right to engage in conduct which would be improper without such a grant. Although legislative procedures give rise to the standards under which a license may be granted, adjudicatory proceedings, requiring due process, are adopted to apply those standards. *Hornsby v. Allen*, 326 F. 2d 605 (5th Cir. 1964). The Administrative Procedures Act, 5 U.S.C. Sections 551 (8) and (9), defines "License" as "the whole or part of an agency *permit*, certificate, approval, registration, charter, membership, *statutory exemption* or other form of permission"; and "Licensing" as "agency process respecting the grant, *renewal, denial, revocation, suspension,* annulment, *withdrawal,* limitation, amendment, modification, *or conditioning* of a license." I found no case where this Honorable Court extends APA to the Commonwealth of Puerto Rico in view of our political status.

But the United States Constitution follows the flag, and the citizens of Puerto Rico are american citizens although Petitioner Seath himself is from New York, N. Y. Puerto Rico has no general administrative procedures act but each agency is governed by the legislative mandate. However, in viewing the procedure followed in the instance at bar, an analogy with 28 U.S.C. Section 2347 should be considered reasonably applicable.

Act No. 76 of June 24, 1975 creates the Regulations and Permits Administration. It does not define "permit" or "use", (Art 3). In its Article 7 it requires formal legislative hearings prior to the adoption and/or amendments of its Regulations. Regarding adjudicative functions, in its pertinent part, it provides:

> "The Administrator prior to any act, decision or resolution of its discretional adjudicative function in the cases provided through Regulation on Questions of Location, Concessions and Direct Authorization, Public Works, or cases of great social interest, among others, shall follow the prior hearing and notification procedure provided for in this Act. . . ."

Article 10 grants discretionary powers to the Administrator to exempt from regulations requirements when "the literal application of its provisions result in a prohibition or unreasonable restriction of the enjoyment of a property and it is proved to his satisfaction that said immunity will alleviate a clearly demonstrable damage, by imposing the conditions that case may merit for the benefit of the public interest. . . ." Article 16 requires a use permit from the Administration for the development and use of land and construction and use of buildings. The Administration is empowered to issue cease and desist orders by Article 25 but any aggrieved party has a statutory right to a hearing. 23 LPRA Sec 71 x. And, its Articles 26 and 28 provides for the special procedures in the District Court that were followed in the case at bar. The law creates a

Board of Appeals in its Article 31, providing for judicial review by the Superior Court of Puerto Rico. (Art. 31). The regulation applicable to the case at bar is Planning Regulation No. 4, Second Revision, 1978. It defines the allowed uses by district or zone. District C-3 is covered by Section 15.00 relative to commercial areas. Under said zone it provides for 42 different commercial uses, residence use (paragraph 43) and certain industrial uses [(paragraph 44(a) to (h)]. Some of the commercial uses allowed are car rentals, parkings, banks, stores, vocational schools, personal services businesses, gas stations, dancing, radio, and TV studios, photographic studios, hotels, gymnasiums, hospitals, guest houses, printing press, churches, laundromats, market places, *restaurant,* cafeterias, soda fountains, *bars or lounges* (Art. 36), beauty parlors, theaters, car lots, sale of heavy machinery, and *commercial recreation* (Art. 34).

Petitioner had a C-3 (36) permit initially granted by the RPA which allowed live entertainment, as it had been traditionally offered there by prior businesses. The change to discotheque was mistakenly but in good faith believed by Petitioner as falling within paragraph 36 of allowable uses. RPA alleged and the District Court upheld that the use permit applicable was that of commercial recreation (Art. 34). *Both uses are within the same C-3 District and need the same requirements.*

Contrary to the language of the Act requiring a prior hearing, the Regulation adopted by RPA illegally provides in Sections 53.00 and 54.00, regarding the discretional concessions and direct authorizations, that public hearings with due notice to the parties will be held if *the Administrator deems it necessary.* Other than the requisites for any C-3 establishment, no additional requirements or procedures are established by regulation for a change in use *within accepted uses* under the same C-3 zone. From the Administrator's Report (Exhibit F), said fact of law is admitted in the third paragraph where he states that a usage may be allowed in a district with said classification (C-3) *if all the requisites exacted for the particular district are met.* Petitioner initially met all requisites, under District C-3 and his license was issued.

Therefore, Petitioner had an initial C-3 Zone permit after complying with all the requisites for said zone. The use allowed was restaurant-bar. The use he seeks is for commercial recreation. There are no additional requisites for said usage. He applied for said permit even though originally he thought there was no great difference in a shift from live to taped music. The only reason why Petitioner has been operating without a use permit is because RPA, without just cause, without affording him the opportunity to be heard, has arbitrarily refused to grant a permit, which is in conformity with the District's requirements. RPA refuses to move the administrative machine. Furthermore, it sought the District Court's powers to enjoin Petitioner from operating his business until he had a use permit that blatantly RPA was not willing to issue.

Adjudicatory procedures must be accorded due process especially when they involve the right of an application to engage in a business, trade or occupation. *Schware v. Bd. of Bar Examiners,* 353 U. S. 232 (1957). In *Hogge v. Hedrick,* 391 F. Supp. 91 (E.D. Va. 1974), the Court found that the protected interest, granting a prospective licensee the right to a hearing was the "liberty" interest of due process. In *Missurelli v. City of Racine,* 346 F. Supp. 43 (E. D. Wis. 1972), vacated on other grounds *sub nom.*, the Court described specific due process requirements for licensing, specially when third parties are involved, like in the case at bar.

When suspension, modification or revocation of a license by the issuing agency is pursued, then the general rule is that a prior hearing *must* take place prior to an actual change in the status of the license, since its continued possession may become essential in the pursuit of a livelihood. *Bell v. Burson,* 402 U. S. 535 (1971). Even in the broad discretionary area of liquor sales, proper hearings have been required. *California v. La Rue,* 409 U. S. 109 (1972); *City of Kenosha, Wis. v. Bruno,* 412 U. S. 507 (1973); 5 Mezines, Stein and Gruff, *Administrative Law,* pp. 41-55.

Action detrimental to the licensee may be exercised without a hearing only when an immediate actual danger to the public has been demonstrated. *Air East, Inc. v. Nat'l Transp. Safety Bd.*, 512 F. 2d 1227 (3d Cir.), cert. denied 423 U. S. 863 (1975); and *Nader v. FAA*, 440 F. 2d 292 (D.C. Cir. 1971). This is not our case, as the record shows, although the Administrator's Report implies a threat, not supported by the record. See also *CAB v. Delta Air Lines, Inc.*, 367 U. S. 316 (1961), holding that any ambiguity must be resolved in favor of the licensee.

The only other exception to the prior hearing and notice requirement is when the licensee intentionally disregards lawful requirements. The record shows that this is not Petitioner's case either. Originally he mistakenly believed that his permit allowed him to use his facilities with taped music. Even though the District Court reasoned there had been a change in use, and that paragraph 34 rather than 36 was applicable—which reasoning we are not controverting—this Honorable Court should weigh that the distinction is so fine that any reasonable man may have unintentionally believed to be in conformity, especially when discotheque and/or night clubs are not listed as such in C-3 zones and on the premises there had always been a night club before, although with live entertainment. This Honorable Court should take notice that Petitioner filed an application before the agency *before* action was brought against him. Moreover, he has diligently defended his right, proving in the *only hearing held*, that RPA could issue him his license, nothing to the contrary withstanding. His act was not "willful" nor done in disregard of lawful requirements. *U.S. v. Ill. Central Ry.*, 303 U. S. 239 (1938). On the contrary, he has tried to comply but has not been allowed to by RPA.

In point to our case is a recent decision by the Court of Appeals of the Seventh Circuit holding that leasehold interests are property interests protected by the Fifth Amendment. *Devines v. Maier*, 50 LW 2351 (1981). It points out that a Fifth Amend-

ment "taking" can occur through the exercise of the police power to regulate property rights. In that case, through the enforcement of housing codes, the owner of the property was left with significant residual property rights while the tenants, whose rights to occupy the premises were extinguished, had nothing left.

So is Petitioner's protected leasehold rights affected. While RPA's capricious denials leaves the owner of the building—another government agency—with an improved property easily leaseable again, Petitioner will have nothing left should the invalid denial of RPA be deemed "final," "legal" and "enforceable" by the District Court upon remand. Such action is confiscatory in nature and violates the very essence of a due process concept, be it under the First, the Fifth or Fourteenth Amendment.

This Honorable Court may have before it many more crucial issues. But, no constitutional interest is small enough, if the cornerstone of democracy—due process—is either totally demolished or gradually eroded. We pray the Writ of Certiorari be granted.

2. Respondent violated Petitioner's constitutional and statutory rights by abusing its discretionary powers and denying him a license that complied with the requisites of District C-3, without holding a hearing prior to, or at any stage, of the denial licensing procedure followed administratively in contempt of the District Court's order.

There is no doubt that United States constitutional due process protections are applicable to federal administrative agencies. *Wong Yang Sung v. McGrath,* 339 U. S. 33 (1950). In that respect this latter case resolved that "The constitutional requirement of procedural due process of law derives from the same source as Congress power to legislate and where applicable,

permeates every valid enactment of that body." (at 49). In *Hornsby, supra,* and citing *SEC v. Chenery Corp.,* 318 U. S. 80 (1943), the Court said:

> "Due process in administrative proceedings of a judicial nature has been said generally to be in conformity to fair practice of Anglo-Saxon jurisprudence . . . which is usually equated with adequate notice and a fair hearing. . . . Although strict adherence to the common-law rules of evidence at the hearing is not required . . . the parties must generally be allowed an opportunity to know the claims of the opposing party . . . to present evidence to support their contentions . . . and to cross-examine witnesses for the other side. . . . Thus it is not proper to admit *exparte* evidence, given by witnesses not under oath and not subject to cross-examination by the opposing party. . . . *A fortiori,* the deciding authority may not base its decision on evidence which has not been specifically brought before it . . . the findings must conform to the evidence adduced at the hearing . . . Furthermore, the Supreme Court has said that an administrative order 'cannot be upheld merely because findings may have been made and considerations disclosed which would justify its order * * * . There must be such a responsible finding'."

The Constitution of Puerto Rico is framed under, and cannot be in conflict with, the United States Constitution. It follows that the administrative due process required from a State of the federal government is applicable to the "Associated State" (Commonwealth) of Puerto Rico. Our own Supreme Court has so recognized citing United States Supreme Court Cases on the subject. *Ortiz Cruz v. Junta Hipica de P. R.,* 101 DPR 791 (1973), citing *Morrisey v. Brewer,* 408 U. S. 471 (1972) and *Goldberg, supra; Marrero Bermudez v. Com. Ind.,* 78 JTS 79; *Pagan Hernadez v. U.P.R., et als,* 78 JTS 77; *Ledesma, Admor. v. Trib. de Distrito,* 73 DPR 396 (1952); *Atl. Southern Ins.*

Co. v. Castro, 86 DPR 79 (1962); *Com. de Seguros v. Bradley,* 98 DPR 21 (1969); *Pierson v. Feijoo,* 600 DPR 838 (1978); *Mundo v. Trib. Sup.,* 101 DPR 302 (1972); *Infante v. Leith,* 85 DPR 26 (1962).

Specifically, in *Paine v. Srio de Hacienda,* 85 DPR 817 (1962), our Supreme Court declared that the rights, privileges and immunities of the citizens of the United States will be upheld in Puerto Rico as if it were a State. Persons born in Puerto Rico have dual citizenship—American and Puerto Rican. It is needless to cite before this Honorable Court, the ample jurisprudence affording constitutional guarantees that have been extended to the citizens of Puerto Rico, especially in the criminal field. *Miranda v. Arizona,* 384 U. S. 436 (1966); *Escobedo v. Ill.,* 378 U. S. 478 (1974); *Rivera Escute v. Jefe Penitenciaria,* 92 DPR 765 (1965).

The question then is, what due process did Petitioner have a right to, under the United States Constitution and Act No. 76, *supra?*

We contend there were at least three valid statutory due processes contemplated before administrative action could have been exercised.

Following the primary jurisdiction doctrine as first stated in *Texas and Pacific Ry. Co. v. Abilene Cotton Oil Co.,* 204 U. S. 426 (1927), the Court should defer action until they have the benefit of an agency's view on issues within the agency's competence. Petitioner first filed his application before the agency. He did not initiate an action in Court. The logical and due process should have been for the agency to notify its objections, as it did on July 5, 1978 and schedule a hearing as required by its organic act. After allowing Petitioner a fair hearing, the opportunity to confront and cross examine witnesses and/or the allegedly aggrieved neighbors, the licensee should have been af-

forded the opportunity to comply with all legal requirements. 5 Mezines, *Ob. Cit.* pp. 41-55. Should the evidence demonstrate that either:

1) Petitioner refused to comply with regulatory requirements, or

2) Petitioner's unlawfulness was of such nature that could not be corrected, and would continuously violate RPA's regulations, or

3) The public health, interest or safety were in immediate danger, or

4) Any valid findings of fact and of law, then RPA could have denied the license providing in writing as required by statute, the grounds of fact and law for denial, which had to be notified to Petitioner. This procedure had to be followed, as per Article 9, even in cases where a use permit due to "particular characteristics" affected the health, security, defense, etc., as the Administrator held in his legal Report. Appendix F. After weighing the evidence the Administrator could have dispensed Petitioner or not from strict compliance, as recommended by the District Court, under his discretionary authority, Art. 10 of Act 76, *supra.*

This procedure would have afforded Petitioner his day in Court, and from said decision he could have appealed to the Board of Appeals of Construction and Subdivisions. After requesting a rehearing of whatever decision the Board issued; Petitioner had a right to a review recourse before the Superior Court of Puerto Rico. This Court, after reviewing the record as a whole, would review only questions of law. Thus, would have been met the Exhaustion of Administrative Remedies within a constitutional and statutory framework of due process. This procedure was not followed in our case.

The second contemplated procedure by the enabling act, was that the Administrator could issue a cease and desist order so that preventive and control measures be taken to further its Regulations objectives. Any aggrieved person has the statutory right (Art. 25) to a hearing to show cause why said order should be revoked, modified or sustained. The Administrator's resolution once again would be reviewable by the Superior Court only, provided that pending its determination by the Court, the order remained effective. This was not followed in the case at bar.

The third contemplated procedure, which was the one RPA chose to follow, was to initiate in a First Instance Court, a special Procedure in the nature of injunctive relief, or Mandamus, etc., to prohibit any use *in violation of the Act* (Art. 28). Now this procedure was equated to an Injunction Procedure by the Supreme Court of Puerto Rico in *Torres v. Rodriguez*, 101 DPR 177, 184 (1973), although with reference to Article 12 of the Planning Law of 1946, 23 LPRA 42, now superseded by Act No. 76. Article 28's language, however, is practically identical to Article 12, for which reason the Superior Court understood, and we hereby allege, that construction of this article should be guided by the jurisprudence pertinent to injunctions. Appendix J. A reading of said article makes unarguable the Court's jurisdiction and responsibility to hold a hearing, conduct a sight investigation, and either *grant or deny* the petition. To that effect, subparagraph (f) provides: "The resolution *may* order the permanent paralyzation of the acts alleged in the petition *or* leave without effect the provisional injunctive order." This Resolution, as per statute, is appealable by a higher court. And, it further provides that *any person* who violates the terms of a temporary or permanent order shall *be in contempt* of the Court and subject to sanctions.

RPA filed a petition under this procedure. The Court held a hearing and a sight inspection. A Resolution with detailed findings of fact and conclusions of law was issued. It denied the permanent injunction, remanded the case to the agency for ad-

ministrative determination in accordance with its recommendations. Obviously, said determination had to be made according to the due process heretofore discussed.

RPA *did not accept* the Court's Resolution and appealed it as it had a right to do. In its appeal, it and the interveners, challenged the Court's jurisdiction on grounds of primary jurisdiction inapplicable in the case at bar. As I understand the doctrine, the issue arises when a statute allows both the administrative forum *and* the judicial forum to an aggrieved party. In said instance, generally the aggrieved party must go to the agency first. This is not so, when like in *Abilene, supra,* the enabling act does not abrogate a common law right to sue, or where as in *Nader, supra,* there is no conflict between common law remedies and the statutory regulatory scheme, or plaintiff is unable to use the administrative process like in *Rosado v. Wyman,* 397 U. S. 397 (1970). Had Petitioner initiated proceedings before the Court to force the agency to conduct administrative proceedings, a primary jurisdiction issue would have arisen, even when in such case the Court would have been free to assume its determination of the case. *Atchinson Topeka & S.F. Ry. Co. v. Aircoach Transp. Ass'n,* 253 F. 2d 877 (D.C. Cir. 1958).

The administrative agency's adjudicatory role in our system was a way of devising a fair, practical and flexible, less costly and complicated than ordinary, litigation. *Perez Rios v. Hull Dobbs,* 78 JTS 90, p. 637. Mezines, *Ob. Cit.* pp. 1-11, *et seq.* This role was abandoned and deformed by RPA.

By appealing the District Court's Resolution, RPA forced Petitioner into costly litigation to continue to defend his rights. Similar to *Bankers Life and Cas. Co. v. Callaway,* 530 F. 2d 625 (5th Cir. 1976), cert. denied *sub nom.* As expressed in *Bankers Life & Cas. Co. v. Hoffman,* 429 U. S. 1073 (1977), on one hand, the party unable to obtain a permit, which would allow financial exploitation of the property, would suffer hardship if judicial review were withheld; on the other hand, should the party comply with the rule that he may not begin operations without the permit, he would end up being unable to use his business to his economic advantage. In our case, four years have

elapsed, meaning that compliance would have left without jobs a number of employees and in total economic ruin the Petitioner. The question at this point is, compliance with what?

The District Court's Resolution was favourable to Petitioner. Once appealed, its review was *sub judice*. Meanwhile the Order to RPA to continue administrative proceedings, suggesting that the injunctive relief was premature, was holding. RPA, in open contempt of the Court's order, refused to hold hearings; and contrary to the Court's findings on evidence submitted to it, took a conflicting position and denied the permit without a hearing.

Was Petitioner in a legal obligation to defend his constitutional rights simultaneously in both forums? The same facts. The same questions of law. Multiplicity of suits. We will cover the exhaustion doctrine in our next argument. But, we would like to stress now that we have been unable to find a case exactly in point, possibly because no other federal agency has acted so arbitrarily, capriciously* and with such absolute disregard of its own enabling act and the judicial resolutions.

We vigorously allege that the dubious proceeding followed by RPA, distracting Petitioner's attention by a timely and legal appeal, which should have first been disposed of if RPA was going to challenge the District Court's Resolution, and at the same time denying without a hearing the use permit in open contempt of the judiciary and with no substantial evidence on its record to justify said "emergency" action, is one of the clearest examples we have ever been exposed to of violation of the First, Fifth and Fourteenth Amendments.

*At this point, we would like to bring to the Court's judicial notice, that Petitioner Seath was the only witness for the Prosecution in Criminal Case No. G-80-482 against Representative Antonio Sagardia, who tried to raise $50,000.00 for his party political campaign in exchange for the controverted use permit. A charge was filed on October 26, 1979 and resulted in his conviction for Article 213 of the Penal Code of Puerto Rico (influence peddling) on June 12, 1980 and sentenced on July 3, 1980 by Judge Felipe Perez Cruz. Mr. Sagardia was President of the Industry and Commerce Committee in the House of Representatives, a member of the New Progressive Party, which is still the present administration.

Our argument herein disposes of the II and III Questions Presented for Review. Except that to emphasize why the Writ of Certiorari should issue, the Court should really see through RPA's real contention. We believe RPA reads in its statute (Art. 28) the same type of reasoning that the Equal Employment Opportunity Commission had in *EEOC v. Anchor Hocking Corp.* (6th Cir. 1981), 50 LW 2394. In said case, Section 706 (f)(2) of the 1964 Civil Rights Act allows the Commission to bring an action for appropriate temporary relief pending final disposition of a charge. EEOC alleged that the statute placed upon the Commission the primary responsibility of determining the necessity of preliminary relief. The Court held that the statute does not state that an injunction must be granted whenever the Commission determines that prompt judicial action is necessary. The decision whether relief is appropriate is left to the Courts. Striking down the dictum of the 9th Circuit Court of Appeals in *EEOC v. Pacific Press Publishing Co.*,535 F. 2d 1183 (1976), Court points out that the problem with EEOC's reasoning was that it would amount to giving EEOC itself the authority to determine whether injunctive relief should be granted. This rationale falls squarely with the case at bar. The judgment of the Supreme Court of Puerto Rico, with relation to the powers of a Court for injunctive relief is contrary to applicable decisions regarding the nature and scope of the courts in injunction proceedings. It dangerously places, without any evidence of legislative intent or statutory language, the initial determination of whether injunctive relief is appropriate on RPA, even when it had before it ample evidence that RPA had exercised said initial determination without holding a hearing as mandated by statute and as guaranteed by the United States Constitution.

3(a). Petitioner was denied procedural due process under the Fifth Amendment because no meaningful access to the Court was afforded regarding a judgment on the finality of an administrative decision that was null and illegal on its face.

RPA's decision denying the use permit was never object of review by the Superior Court as provided by statute. The issue before the Superior Court was the appealability of the District

Court's Resolution. Because the District Court retained jurisdiction while remanding the case to the agency for appropriate proceedings, the Superior Court held that only final resolutions were subject to an appeal. However, since the Trial Court's discretion was being challenged also, the Superior Court held that were it appealable, he would confirm it. Defending the court's injunctive powers, the Superior Court judge stated: "We are unable to agree with the position adopted by the appellants that the District Court could only determine whether or not a specific use for which *no specific permit existed* was being carried on, and that if it so determined, it issue the restraining order. This behavior would not only be incompatible with a statute that expressly authorized defendant to 'oppose any legal defense', but would be incompatible with the general doctrine of injunction, which has always recognized the court's discretion and its duty to weigh the interests in conflict and which has never conceived the role of the court as one of a robot with no discretion or capacity to judge. . . ." (Emphasis supplied)

Those two questions were the only ones object of the Writ of Certiorari before the Supreme Court of Puerto Rico. If affirmed, it meant that the District Court's resolution was not appealable. It would also mean, that the alternative dictum affirming jurisdiction below would be affirmed. In such case then, RPA had to obey the District Court's Order and pursue its administrative proceeding according to statute. If annulled, the Supreme Court decision then meant that the District Court's Resolution was appealable, as it is clearly stated in the statute. The Supreme Court could have either affirmed, or denied the District Court's discretion as asserted by RPA. If affirmed, again RPA had to obey the District Court's Order. If not, the District Court had no choice but to issue the temporary or permanent injunction sought by RPA. This by itself is in conflict with applicable decisions of this Honorable Court, as will be discussed further on, as it has the effect of stripping the courts of the interpretative functions of irreparable damage that underlies injunctive relief, and of the balancing test regarding due process, unduly placing said authority by judicial fiat on an administrative agency. *Ortiz Cabrera v. Court*, 101 DPR 612 (1973), *Ports Authority v. Court*, 103 DPR 903 (1975). *Cafeteria Workers Union v. McElroy*, 367 U. S. 886 (1961).

But this was not all that the Supreme Court judgment did. It held that the administrative decision was *final and firm*. Thus, when the District Court opens re-hearings for "final adjudication of the controversy according to the present status"—which is that the business continues to operate without the use permit that RPA has refused to issue—the District Court can only *grant* the injunction. The business will be closed over proof that it substantially complied with all the requirements, that no different requirements are exacted for a paragraph 34 C-3 Zone operation than a paragraph 36 C-3 Zone operation. And . . . that the only missing endorsement . . . that of the Institute of Culture regarding the exterior minor changes is not even necessary as the awnings and planters were immediately removed by Petitioner in his efforts to comply to the agency's requirements.

The weakness of our case lies in the exhaustion of remedies doctrine. Did Petitioner incur in laches? He requested a hearing. He petitioned for rehearing. He received no answer. He had recourse to the Board of Appeals but did not do so. Did he have to exhaust the administrative procedure while litigating in Court the same issues? He reminded RPA that the case was *sub judice* and that its action—until revoked—was in conflict with the Court's Order, and in contempt of such Order. Could said administrative decision be considered final when it violates essential constitutional rights? We hold the Supreme Court of Puerto Rico erred in so finding.

The exhaustion doctrine is not a hard and fast rule. A primary purpose for the doctrine is to prevent the Courts from interfering with administrative proceedings, which is not our fact situation, since RPA, not the aggrieved party, initiated the action. Exceptions to the doctrine for judicial review have been carved out requiring that the government's interest in application of the doctrine, outweighs the burden it places on Petitioner. *McKart v. U. S.*, 395 U. S. 185 (1969). Said exceptions to the exhaustion doctrine have arisen from a number of cases, and some of them were listed in *Feaster v. U. S.*, 396 U. S. 962 (1969) as: (1) international repercussions as a result of agency proceedings; (2) *violation of constitutional rights by the agency;* (3) *agency action in excess of statutory authority.* (Emphasis supplied). Also, when the pursuit of an administrative remedy would be

futile or when the decision makers were hopelessly deadlocked, review may be granted without exhaustion. *Order of Railway Conductors of America v. Swan*, 329 U. S. 520 (1947). Irreparable injury will also serve as an exception, which was a factor considered by the District Court's Order.

For the end of this Honorable Court's jurisdiction, suffice it to allege that agency action in excess of statutory authority has violated Petitioner's constitutional rights. In *Goldberg, supra*, this Honorable Court developed a balancing test in which the precise nature of the government function involved is weighed against the parties that have been affected by government action and to the extent that the private interest outweighs the government function, greater procedural due process rights will be afforded to the affected parties. What then is the government interest so great as to summarily strip Petitioner of his property without just compensation? What is the public interest protected—safety? health? population? defense? order?—which of the Article 9 special circumstances listed in Appendix F finds support in the record to outweigh the irreparable damage to Petitioner, to deny him his property rights and the loss of jobs to an economy that has a 23% unemployment rate? I suggest there is no valid reason to support RPA's denial, without due process.

It is obvious that a group of residents intervened actively in the Court procedure—*without offering any evidence to support their standing and interests.* That they are an "interested party" flows clearly from their pursuing an appeal, even when RPA abandoned it at the Supreme Court level.

Now, the record shows that there are residents in Old San Juan within a commercial district. It is also clear that the commercial uses (42 in total) and industrial uses (8) outweigh the residential use (1) of that District. The range of permissible uses was before discussed. A hotel, with its restaurant, bar, lounge and casino is adjacent to the premise of Petitioner. Why did they pick on Petitioner? His business decorations are of good taste. The sound of his discotheque cannot be heard outside. He meets Fire and Health Department requirements. The sight inspection conducted by an impartial judge throws no impediments to his license grant or modification.

I suggest the neighbors, who chose to reside in Old San Juan, knew that said District was a highly commercial one. In fact, it is the tourist attraction *par excellence*. Commercial recreation that would enhance the area's attraction for cruise ships and tourists should be promoted not suffocated. The area cannot, nor should it be turned into a residential area, nor is that RPA's object. So, again, what public interest is present to deprive Petitioner of his property rights without due process?

Which violation of the Regulations is so serious as to move RPA to seek injunctive relief on behalf of the people of Puerto Rico? Petitioner did not *construct nor extend the building*. Therefore, no prior construction permit was necessary. The Institute of Culture does not have jurisdiction of interior changes; only in structural exterior changes at historic buildings. This is not even a "historic" building since it was built in this century. Appendix D. What did Petitioner do that was so terrible? RPA did not advance one good reason as grounds to support the special procedure chosen. The four objections reported on July 5, 1978 to Petitioner were properly disposed of at the hearing. But . . . said dispositions are now being vacated by the Court below by giving finality to a null decision, absent a record for review. RPA prevented the making of such record. The fact that there was no fair hearing at the administrative level was not considered, and is not set forth, in any decision below.

Under the *Matthews v. Eldridge* balancing test, 424 U. S. 319 (1976), the private interest here affected is substantial and the potential deprivation great. Although the government interest in developing an integral planning of the construction and use of property is valid, it was limited, both in its rule-making and adjudicative functions by our legislative assembly, to guarantee due process—violated in the case at bar. Nor did the neighbors prove their standing for injunctive relief. The United States Court of Appeals for the Seventh Circuit denied injunctive relief to neighbors of a subsidized housing project because they did not show an injury likely to be redressed by a favourable decision. *South East Lake View Neighbors v. HUD*, 51 LW 2127 (1982). Petitioner has operated his business properly during four years with no injury to them. If he is evicted, the building shall be leased for the traditional type of commercial

operation undertaken during the last 15 years. But, above all, the "secret evidence" provided by these neighbors, "the silent interests" propounded by them, should not prevail over Petitioner's acquired property rights, when he could never confront nor cross-examine them since none of them took the stand.

In view of the foregoing, we contend that RPA's denial is null and void, its action violated constitutional and statutory due process for which reason exhaustion of remedies is not needed to obtain judicial review. RPA's lack of record avoids the possibility of factual consideration. Review had been anyhow limited to questions of law by the Superior Court. This court never reviewed the agency's determination. Thus, the conclusion of law by the Court below that said determination is firm is contrary to federal case law as it did not account for the lack of due process, and denies Petitioner an effective access to his day in court. Certiorari should be granted.

3(b). By denying meaningful access to the Court to Petitioner, the Court below has violated Petitioner's due process under the Fifth and Fourteenth Amendments of the United States Constitution.

We contend that although Petitioner's right to a hearing is a substantial constitutional question, up until the Court's judgment below, his right to invoke constitutional protection was not ripe[1] because there are no restrictions on when the agency must conduct a hearing. The crux of the matter is that some hearing takes place before the agency's decision *becomes effective. Opp. Cotton Mills v. Administrator,* 312 U. S. 126 (1941). Even in emergency situations meriting summary action, a hearing is afforded at a later date. *Ewing v. Mytinger & Casselberry, Inc.,* 339 U. S. 594 (1950).

Following the *Abbot* guidelines, RPA's determination would meet the test for finality and reviewability. Facts and defenses as brought before this Honorable Court may have been available to Petitioner on review before the Superior Court of Puerto Rico. However, the Court below determined the administrative denial was *firm*. Consequently, it is not reviewable any longer.

[1]Mezines, Ob. Cit. Sections 48.02 and 48.03 on Ripeness and Finality, pp. 4-29.

Furthermore, it remands the case to the District Court for further proceedings. Only the Superior Court can review administrative actions per statute.

Petitioner's only open government redress under the First Amendment to safeguard his Fifth and Fourteenth Amendments rights is recourse to this Honorable Court. Certiorari should be issued to consider questions of constitutional law. Under the *Abbot* case test, the hardship to the Petitioner as a result of withholding review is apparent.

Furthermore, to await the District Court's "final" determination, when we anticipate Petitioner will be enjoined from the use and enjoyment of his property, we hold is unneeded, as it falls under the "Collateral Order" exception, which allows an Appellate Court to review non-final determinations of a lower court. *Cohen v. Beneficial Industrial Loan,* 337 U. S. 541 (1949). We mention this issue because to the undersigned attorney, it is clear that the Supreme Court of Puerto Rico's judgment is final and subject to a Certiorari Writ. At the same time, further proceedings will ensue as a result at the District Court level, which should be stayed pending resolution of this petition, if its grant is to become meaningful. To that end, we shall file as soon as possible our petition for stay.

4. The Court below has decided a federal question in a way in conflict with applicable decisions of this Court.

The finding considering as firm the administrative decision of the Regulations and Permits Administration was not a finding of fact at all. It was an unwarranted conclusion of law supported by nothing in the Record.

As before argued, procedural due process imposes constraints on governmental decisions which deprive individuals of property interests within the meaning of the due process clauses of the Fifth and Fourteenth Amendment.

Back in 1958, in interpreting the Planning Board Act, our own Supreme Court held in *Lopez v. Planning Board,* 80 DPR 646, that:

> "Upon considering and resolving an exception application for the construction and operation of a tourism hotel in a zone or district R-1, filed directly on first instance before it, the Planning Board has to celebrate an administrative hearing of quasi-judicial character abiding by the requisites of due process of law, has to make findings of facts supported by the evidence submitted at the hearing, and has to set forth the reasons or conclusions of fact and of law as grounds for its decision."

The present Planning Board Act contains almost identical language with reference to the exceptions and authorization functions as expounded by the Honorable Superior Court Judge. Thus, *sub silentio,* through this anomalous judgment, in fact the court below is revoking the *Lopez* ratio decidendi, a leading case in our jurisdiction. It is rendering a decision that conflicts with its own reasoning in *JRT v. Missy Mfg. Corp.*, 99 DPR 805 (1971), that just and reasonable guidelines formulated to further justice and minimize the rigors of both judicial and administrative proceedings affecting the fundamental rights of a party's day in court are ineludibly applicable to both court and administrative adjudications.

An important federal question is at issue.

Long ago this Honorable Court ruled that people who are brought into contest with the Government in a quasi-judicial proceeding aimed at control or criticism of their activities are entitled to be fairly advised *beforehand* of what the Government proposes as the issue, and to be heard on the proposal before a final ruling is issued. *Morgan v. U. S.*, 304 U. S. 1, 18-19, 5889 S. Ct. 773, 82 L. Ed. 1129 (1938). Since, this Court has consistently held that some form of adequate hearing is required before any individual is deprived of a property interest. *Matthews v. Eldridge, supra; Wolff v. McDonnell,* 418 U. S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974); *Armstrong v. Manzo,* 380 U. S. 545, 85 S. Ct. 1187, 14 L. Ed. 2d 62 (1965).

The right to be heard before being condemned to suffer grievous loss of any kind is a principle basic to our society. *Joint Anti-Fascist Committee v. McGrath,* 341 U. S. 123, 71 S. Ct. 624, 95 L. Ed. 817.

In the case at bar, the double-standard procedures followed in court vis-a-vis a contemptuous administrative resolution, has resulted in the deprivation of Petitioner's cause of action, of fair redress, and in due time of his property rights.

This year, the due process clause of the Fourteenth Amendment regarding the deprivation of a property interest was object of an excellent, thorough analysis and opinion delivered by Justice Blackman in *Laverne L. Logan v. Zimmerman Brush Co., et al.,* 50 LW 4247 (1981). Therein, the Court held that a cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause, reaffirming the 1950 decision of Justice Jackson in *Mullane v. Central Hanover Bank and Trust Co.,* 339 U. S. 306 (1950). Pointing out that the question is hardly a novel one, the Court reaffirms a party's right, either as a plaintiff or a defendant, to a redress of grievances and to be heard, thus reaffirming *Boddie v. Connecticut,* 401 U. S. 371 (1971), *Wolff, supra,* and other prior Supreme Court decisions cited in the opinion, with which the judgment below at issue openly conflicts. It also covers the nature of a property interest. Citing from *Memphis Light, Gas, and Water Division v. Craft,* 436 U. S. 1, 11-12 (1978), it reasons that the hallmark of property is an individual entitlement grounded in state law, which cannot be removed except "for cause". Thereafter, Justice Blackman reaffirms the *Goldberg* decision on welfare benefits and others dealing with a horse trainer's license, utility service, disability benefits, high school education, government employment and a driver's license (at 4250), some of which we have used as legal basis for this petition. Relying on a number of leading Supreme Court decisions, too numerous to unnecessarily cover herein, the Supreme Court plainly leaves no doubt that the due process clause grants the aggrieved party the opportunity to present his case and have its merits fairly judged prior to a

decision that destroys his property interest, and also that absent the necessity of quick action by the State a postdeprivation hearing is constitutionally inadequate, stating that this reasoning is in line with *Parratt v. Taylor*, 451 U. S. 527 (1981), although the holding in the latter differed. Concluding, the Court restates that what the Fourteenth Amendment does require is "an opportunity . . . granted at a *meaningful time* and in a meaningful manner.".

The judgment of the Supreme Court of Puerto Rico in the case at bar conflicts with the applicable decisions of this Court and with the United States Constitution, for which reason the Writ should issue.

Conclusion.

Puerto Rico has been considered by this Honorable Court sovereign over matters not ruled by the Constitution. *Calero Toledo v. Pearson Yatch Leasing Co.*, 416 U. S. 663. We realize the high deference that its Supreme Court opinions are given by this Honorable Court. The review we request is of a judgment order. At stake are constitutional rights and/or privileges. Violations of this nature may be brought to your consideration under 28 U.S.C. Section 1258. The reasons relied on for the allowance of the Writ of Certiorari are fundamental to our democratic system. For these reasons, a Writ of Certiorari should issue to review the Judgment Order of the Supreme Court of Puerto Rico.

Respectfully submitted,

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Appendix A—Judgment Order of the Supreme Court of Puerto Rico.

Translation

REGULATIONS AND PERMITS ADMINISTRATION, Etc.,

Complainant,

v.

JOHN SEATH,

Respondent-Appellee,

ALBERTO DEL TORO, *et als.*,

Interveners-Petitioners.

No. 0-80-328

Certiorari

Judgment of Angel Hermida, Judge, San Juan Section

JUDGMENT
(RULE 50)

San Juan, Puerto Rico, on June 30, 1982.

Considering as firm the administrative decision of the Regulations and Permits Administration (Dec. 15, 1978) that denied a use permit requested by Petitioner-Respondent Seath to operate the discotheque (night club) "San Juan San Juan"; and that from the updated statement of facts as of June 15, 1982 submitted by District Judge, Mr. Brocco Oliveras, it appears that

the restaurant business closed but the discotheque that was a dependency of the former continues to operate, and that four years after the District Court's judgment (Sept. 22, 1978) the conditioned use permit has not been granted by RPA, a possibility that then stayed a concrete adjudication of the injunction petition prohibiting the discotheque operation, to which end the District Court retained jurisdiction for procedural warranted action.

We annul the Superior Court (May 28, 1980) judgment on review and remand the case to the District Court for final adjudication of the controversy according to the present status of facts.

So was pronounced and ordered by the Court and so certifies the Clerk General. Chief Justice, Mr. Trias Monge and Associate Judge Mr. Rebollo Lopez did not intervene. Associate Judge, Mr. Negron Garcia inhibited himself.

(signed)

LADY ALFONSO de CUMPIANO
Clerk General

Appendix B—Resolution of the Supreme Court of Puerto Rico Denying Rehearing.

Translation

IN THE

SUPREME COURT OF PUERTO RICO

REGULATIONS AND PERMITS ADMINISTRATION, Etc.,

Complainant,

v.

JOHN SEATH,

Respondent-Appellee,

ALBERTO DEL TORO, *et als.*,

Interveners-Petitioners.

No. 0-80-328

Certiorari

Court incorporated by its President, Associate Justice, Mr. Davila and Associate Justices Messrs Torres Rigual and Rebollo Lopez.

RESOLUTION

San Juan, Puerto Rico, July 22, 1982.

The motion for rehearing is denied.

Agreed to by the Court and certified by the Acting Secretary.

(signed)

HERIBERTO PEREZ
Acting Secretary

Appendix C—Resolution of the Supreme Court of Puerto Rico Denying Clarification.

IN THE

SUPREME COURT OF PUERTO RICO

Translation

REGULATIONS AND PERMITS ADMINISTRATION, Etc.,

Complainant,

v.

JOHN SEATH,

Respondent-Appellee,

ALBERTO DEL TORO, *et als.*,

Interveners-Petitioners.

No. 0-80-328

Certiorari

Section integrated by its President, Associate Judge, Mr. Davila and Associates Judges Messrs. Diaz Cruz and Irizarry Yunque

RESOLUTION

San Juan, Puerto Rico, on September 9, 1982.

The second motion of Respondent appellee for stay of the mandate and clarification of the judgment is denied.

Said party shall adhere to the finality of the provisions therein.

So was resolved by the Court and so certifies the Clerk General.

(signed)

LADY ALFONSO de CUMPIANO
Clerk General

Appendix D—District Court Resolution.

Translation

GENERAL COURT OF JUSTICE

DISTRICT COURT

San Juan Section

RULES PERMITS ADMINISTRATION, through its Adm. Eng. William Salva Matos and Edmundo Colon Arizmendi,

Plaintiffs,

vs.

JOHN SEATH,

Defendant.

Civil No. 78-3547 On: Special Procedure, Art. 28, Law 76 of June 24, 1975

RESOLUTION AND ORDER

On September 15, 1978, at 10:22 A.M., Plaintiff Rules and Permits Administration—hereinafter the R.P.A.—represented by Engineers William Salva Matos and Edmundo Colon Arizmendi, filed the above referenced proceeding, pursuant to the provisions of Article 28 of Law Number 76 of June 24, 1975 against Defendant. This complaint alleges that Defendant operates a discotheque at 150 Cristo Street in San Juan, Puerto Rico, without the necessary permit.

Pursuant to the provisions of the aforementioned law, the Court issued, on the morning of the 15th, the corresponding order ordering Defendant to immediately cease operating the discotheque, subject to contempt, and set the hearing provided by law for September 22 of this year.

On the afternoon of the same day, September 15, Defendant was notified with a copy of the documents filed and immediately filed his answer, through motion, in which he substantially alleged that the filing of the proceedings on a Friday made it impossible for him to properly defend himself in this summary proceeding, that Plaintiff could have filed the complaint and obtained the order before Friday, thereby giving Defendant the opportunity to plead his case before the following Monday. It is also alleged in said Motion that Defendant's business is the property of "Le Chatelet" who operates the same and who also has a restaurant on the premises, and that as part of the restaurant he has always had a dance floor with music, which aspect of the business is now called San Juan San Juan. In addition, Defendant alleges that "Le Chatelet" employs 35 Puertorricans with a weekly payroll of $4,500.00 and that the immediate closing of this business would leave 15 persons without employment and would result in his economic ruin.

Pursuant to the previous allegations, giving special consideration to the fact that the proceeding was filed on Friday, it being quite evident that Defendant would suffer the impact of said order during the weekend without being able to do anything, the Court issued a new order on that same September 15 which rescinded the previous one until the hearing set for the following Monday, September 18 at 2:00 P.M. was held.

Plaintiff appeared at this hearing through Attorney Aida Franceschini and Defendant through Attorney Ralph Vallone, Jr. In addition, Attorney Gilberto Oliver Vazquez appeared on his own behalf and in representation of a group of residents of San Juan acting as intervenors. Defendant opposed the intervention alleging that they had no right whatsoever to intervene. After arguing the incident, the Court stated that as a matter of procedural law they had the right to intervene. After a

discussion of this incident, both parties presented oral and documentary evidence in support of their respective allegations. Intervenor presented no evidence whatsoever at said hearing, but fully cross-examined and offered documentary evidence during said cross-examination. The Court, understanding that it was prudent and in order to be in a better position to issue a reasonable and equitable order, ordered and appeared at a sight inspection of the property subject of the controversy, which was held on Tuesday, September 19, 1978 at 10:00 A.M.

The parties as well as some of the intervenors, representatives from the Department of Transportation and Public Works, Division of Environmental Control and the Division of Permits of the Municipality of San Juan and agents from the Bureau of Alcoholic Beverages were present at said sight inspection.

Taking into consideration the oral and documentary evidence presented to the court by both parties, the cross-examination conducted by intervenors, the sight inspection as well as the pleadings of the parties, the Court, pursuant to the provisions of Law Number 76 of June 24, 1975, issues the following statements on the evidence presented:

DETERMINATIONS AND CONCLUSIONS OF FACT

1. The building where the business subject to the controversey is located is the property of the Puerto Rico Industrial Development Company (PRIDCO), who leased it to Le Chatelet, Inc. on or around July 1977.

2. Said building is located in a C-3 Zone, pursuant to the zoning map of San Juan. Commercial use is permitted in C-3 zones.

3. On February 8, 1978, the R.P.A. issued a use permit to Mr. John Seath to operate a Bar-Restaurant on the first and second floor of the aforementioned building. Said use is in agreement with a C-3 zoning. See Exhibit I—Defendant.

4. Pursuant to the permit issued to Defendant, he commenced operating a restaurant on the second floor of the building and named it "Le Chatelet". Said restaurant has an entrance through the side door which the building has on its left side and a stairway which is also on the left side. It may also be entered through the front door.

5. As part of the operation of the restaurant, and pursuant to the permit issued, Defendant opened a Bar on the first floor, for the sale of alcoholic beverages. In order to attract clientele he restored and reused a round dance floor which the location already had. The music being played was live music, in other words, it was not taped. The access to this Bar was through the front of the building and also through the side door which also gave access to the restaurant.

6. During the time Defendant operated his business in the aforementioned manner there were no complaints nor indications that he was violating the R.P.A.'s rules or any other rule of the Planning Board.

7. The R.P.A. issued Defendant a use permit to operate the business in the aforementioned manner, pending the endorsement of all the agencies concerned. Note that he was only operating the Bar for several months before the permit was obtained.

8. On May 11, 1978, the Puerto Rico Tourism Company sent Defendant a letter where it indicated that after an inspection they found that the restaurant facilities and conditions satisfactorily complied with the rules and requirements of the Company, and, therefore, they were including it in the promotional list of their "Que Pasa" magazine. See Defendant's Exhibit VI.

9. In order to take advantage of the boom which the new dance styles and music sounds were enjoying in Puerto Rico, Defendant decided to modify that portion of his business

dedicated to the Bar and changed it into a dance hall of the type known as discotheques. He therefore proceeded to file the corresponding use permit with the R.P.A. on June 30, 1978, See Intervenor's Exhibit I.

10. Believing that there would be no objection to the change on R.P.A.'s behalf, since it was in agreement with the zoning rules, he commenced remodelling and decorating the portion of the building dedicated to a Bar. He then proceeded to install decorative lights, emergency lights, a closed circuit television camera, decorative mirrors all over, he decorated the doors, added two interior small wall portions to create small foyers, and covered holes that were previously doors, thus creating the effect of larger privacy, better acoustics and preventing the noise from being heard outside. In addition he redecorated the existing bar, installed a new floor on the dance floor, decorated the bathrooms and added washbasins in one of them, installed additional electronic circuit connected to the central electrical system of the building, which in turn is connected to the main lines. He also installed electronic and sound equipment proper to a discotheque. In general terms, that portion of the building dedicated to the bar and dance area only underwent minimum structural changes which were adding small portions of a wall and covering holes which were previously doorways.

11. In the exterior of the building, Defendant installed awnings in the front, where the entrance door is located and on the left side including the side door, he also placed several planters in front and on the left side.

12. The largest change which the bar area suffered was in its interior decoration. This is in good taste and Defendant has invested a large amount of money in it.

13. On July 5, 1978, the R.P.A. sent a letter to Defendant where he was informed that the use permit for the discotheque was being objected to because he had to comply with the follow-

ing requirements: Submit evidence demonstrating that the building was remodeled and extended with said officer's permission; (2) the endorsement of the Fire Department; (3) the endorsement of the Department of Health on the sanitary conditions of the building; and (4) the endorsement of the Institute of Culture as to the extensions and remodelation. See Exhibit II—Intervenor.

(a) With respect to the first objection, the Court finds as a question of fact, and after the sight inspection and the presentation of the arguments of the parties, that the bar area has sufferd no structural changes which would merit qualifying it as having undergone an extension or remodelation and that the largest alteration was in the decoration, which has altered its appearance and made it more pleasing to the eye.

(b) As to the second objection, after inspecting the location, the Fire Department recommended the installation of three fire extinguishers, emergency lights, exit signs on all doors leading to the outside, which are three. Said sight inspection proved that all these requirements had been met.

(c) As to the third objection, the inspection revealed that the bathrooms are identical to those in existence when the Department of Health issued its license on May 31, 1978, except that a washbasin was added to one of them and both were decorated, making them more attractive. The Court determines that said bathrooms are in perfect sanitary condition.

(d) As to the fourth objection, we have already concluded that the building did not suffer any structural changes which would have the effect of remodelling or extending the premises, that the largest modification was in the decoration and lighting, which is also decorative. With respect to this matter, the Executive Director of the Institute of Culture, on July 20, 1978, sent a letter to Eng. William Salva Matos, Administrator of the R.P.A. in which he stated that said agency had no jurisdiction

whatsoever on the interior decoration of buildings in the Historic zone of Puerto Rico since this was not contemplated in Rule #5 of the Planning Board, unless the proposed decoration alters the building's structure. See Intervenor's Exhibit III.

(e) The sight inspection which took place revealed that the building in question was of reinforced concrete built in this century. This being so and pursuant to the letter from the Institute of Culture itself, we conclude as a question of fact that said agency had no jurisdiction to intervene with the interior decoration of the building in question and its endorsement should limit itself to the exterior part of the building. Since the building is PRIDCO's property, its intervention would only relate to the awnings and planters which Defendant installed and which are the additional installations which Defendant has made.

14. We therefore conclude, as a question of fact, that of all the endorsements required by the R.P.A., the only necessary one is that of the Institute of Culture and this should be limited to whether the awnings or planters in any way alter the architectural design of the building and follow the general pattern for Old San Juan. The others, we understand, are not necessary and can be set aside since Defendant complied with the requirements of the Fire Department and the license issued by the Department of Health is sufficient to operate the discotheque.

15. The sight inspection also revealed that the sound of the music produced by the electronic equipment at the discotheque cannot be heard beyond the walls and the consensus of all parties, including the magistrate, was that the music caused no disturbance.

16. Although there is no direct evidence to reach this conclusion, since intervenor did not present any evidence, we are of the opinion that there is fear in the immediate vicinity that the operation of the discotheque will cause crowds, traffic congestion and the ensuing disturbances which these will create.

17. The Court takes judicial notice that the streets in San Juan are very narrow, especially in the area where the premises subject to the controversy is located, and that this matter has received a lot of publicity from the press as well as on the radio.

18. In front of the building where the business is located is the Cathedral Plaza, on the right is the Hotel El Convento and in front of the placita is the San Juan Cathedral.

19. It is undeniable that closing this business will force Defendant to fire some of its employees and will cause him irreparable damages.

We therefore conclude, as a question of fact, that in order for Defendant to operate the discotheque at this location, he must submit the missing endorsement from the Institute of Culture, limited to whether or not the awnings and planters installed in the exterior alter the general architectural pattern of San Juan pursuant to its rules and regulations and the concession or denial of the use permit of the R.P.A.

STATEMENT OF APPLICABLE LAW

1. Law Number 76 of June 24, 1975, Article 28, authorizes this Court to issue an order to permanently paralyze the acts alleged in the petition or definitively to set aside the temporary order. We have already indicated that due to the circumstances by which this Court was petitioned, it set aside the restraining order until the hearing, thereby avoiding Defendant the rigor of a preliminary closing.

2. Subparagraph (e) of the aforementioned article gives Defendant the opportunity to defend himself, which was what he did, and pursuant to the same the Court set aside the restraining order, allowing Defendant to prove his defense in the hearing which was held.

3. From the evidence presented by both parties it is undoubtable that the usage of the building, after the minimum remodelation and decoration, changed—from being a bar with a dance floor to being a discotheque where the principal reason for its patrons to attend is to dance, contrary to a bar, where the principal reason is to drink alcoholic beverages and to sometimes dance. Planning Regulation Number 4, in section 15.02 (as amended) establishes, among other things, that among the usages permitted in a C-3 Zone are those of commercial recreation (subparagraph 34), restaurants, cafeterias, soda fountains, bars or cafes. (subparagraph 36).

Plaintiff sustains that the proposed usage (discotheque) is included in subparagraph 34 on commercial recreation, and that it therefore needs the R.P.A.'s permit. Defendant, on the other hand, argues that the usage of a discotheque falls within the classification of subparagraph 36 and that, therefore, it does not need any additional permit and can operate the discotheque with the permit presently in effect. We understand, and so resolve, that Defendant has no basis for his contention. The use of the building has changed and this is why the remodelation and decoration which we have previously mentioned were made. It is therefore necessary, in order to permanently operate as a discotheque, that Defendant obtain the necessary permit from the R.P.A., pursuant to the provisions of Section 3.02 of Planning Regulation No. 4, as amended.

4. Article 10 of Law No. 76 provides that the Administrator of the R.P.A. may forego the compliance of the requirements of the Planning Rules pursuant to what is established in the rules, in cases where the literal application of its provisions would result in an unreasonable prohibition or restriction of the enjoyment of a property or belonging and it is satisfactorily proven that said release shall provide relief to a clearly provable prejudice, being able to institute the conditions which the case warrants for the benefit of public interest.

Pursuant to the statements we have made on the evidence and the aforementioned legal provisions, this case is clearly one where the Administrator of the R.P.A. may exercise his discretion, more so when Defendant has substantially complied with the legal requirements, and can grant a permit solely for the operation of the

discotheque, thereby contributing to prevent any irreparable economic damages to Defendant in order that a series of persons not be left without jobs and also so that the public interest will not be greatly prejudiced.

For the aforegoing reasons, the Court Denies the request for an injunction permanently prohibiting Defendant from operating his commercial business as a discotheque and reverts this matter to the R.P.A. so that said agency act in accordance with these recommendations. In the interim Defendant must submit the missing endorsements to said agency.

The Court reserves its jurisdiction for ulterior proceedings related to this matter.

In San Juan, Puerto Rico, September 22, 1978.

(signature)
WILFREDO ALICEA LOPEZ
Judge

I HEREBY CERTIFY:

That on the 25th of September 1978 I sent copy of this Resolution and Order to Eng. Edmundo colon Arizmendi c/o its lwyer Attorney Aida Franceschini, Rules and Permits Administration, Minillas Governmental Center, Stop 22, Santurce, P.R., to Attorney Ralph Vallone, Jr., Banco Central Bldg., Suite 1003, 221 Ponce de Leon, Hato Rey, P.R. 00919 and Attorney Gilberto Oliver Vazquez, Fomento Bldg., Office 640, 268 Ponce de Leon, Hato Rey, P.R. 00917

LIDIA R. DIAZ
SEC. GENERAL

(signed) Maria E. Santiago
by: Asst. Sec.

Appendix E—District Court Sight Inspection Report.

Translation

GENERAL COURT OF JUSTICE

DISTRICT COURT

San Juan Section

THE RULES AND PERMITS ADMINISTRATION, through its Adm. Eng. William Salva Matos and Edmundo Colon Arizmendi,

Plaintiffs,

vs.

JOHN SEATH,

Defendant,

ALBERTO DEL TORO and Others,

Intervenors-Appellants.

Civil No. 78-3547 On: Special Procedure, Art. 28 of Law 76 of June 24, 1975

SIGHT INSPECTION REPORT

On September 19, 1975, a sight inspection was made at 10:00 A.M. The following persons were present at the same:

1) Eng. Edmundo Colon Arizmendi for the Rules and Permits Adminstration

2) Attorney Ralph Vallone Jr. on behalf of Defendant

3) Attorney Aida Franceschini on behalf of the Rules and Permits Administration

4) Attorney Leonor Porrata for the Rules and Permits Administration

5) Attorney Gilberto Oliver Vazquez on behalf of Intervenors

6) Attorney Doel R. Quinones, neighbor and intervenor

7) Attorney Vilma Vila Selles, neighbor and intervenor

8) Mrs. Linda Sanfeliz, neighbor and intervenor

9) Mr. David Ortiz, neighbor and intervenor

10) Mr. Santos Irizarry, Assistant to the Director, Public Works Department, Environmental Control

11) Mr. Charles Kamere, Investigator, Secretary's Department, Permits Division, Municipality of San Juan.

12) Mr. Victor Rodriguez and Mr. Oreste Rivera—Mr. Edwin Ocasio Vega—

Internal Revenue Agents, Alcoholic Beverage Division, Department of the Treasury

13) Mr. Jose A. Villamil, Marshall for the District Court, San Juan Section

During the course of the Sight Inspection, the subscribing Judge observed the following:

1. Exterior Aspects:

The object being observed is located at the end of the Cathedral Placita. It consists of a three-floor reinforced concrete building, with a front and two lateral doors in the first floor.

In front of the placita and separated by Cristo Street is the San Juan Cathedral. On the right side and separated by a local street is the El Convento Hotel.

In front, and serving as a curtain, defendant installed an awning for the front door, which he also did on the left side where the door which leads to the Le Chetelet Restaurant is. In front of the building and on the left side defendant also installed some planters. There are also ornamental plants on the balcony of the second floor and in the Cathedral Placita.

On the right side is the Caleta Las Monjas and on the left is the Caleta de San Juan. Both coves have residential buildings on them.

The left side sidewalk is approximately 15 feet wide, on the left side *(sic)* the sidewalk is narrow and irregular.

The coves as well as Cristo Street are very narrow and paved with cobblestones.

The land from where Cristo Street is and up to the front of the building has a reasonable inclination.

2. Interior Aspect: First Floor

The first floor of the building is reached by a front door or by the left side door, on the right side there is also a service entrance. The left door is principally used to enter the restaurant which is on the second floor. These three doors constitute three emergency exits for the first floor.

The first level, in other words the first floor has two levels, is about three feet from the sidewalk level and the second, where the dance floor is, can be found about four feet from the sidewalk level. When the building is entered by the front door there is a small lobby. In the front wall of this area a closed cir-

cuit television camera was installed, mirrors were added and the doors were decorated and decorative mirrors were placed. There is a small warehouse which has not suffered any alterations.

In order to build the lobby, defendant added a small piece of wall with which he covered part of the hole that was the entrance to the main room, this entrance used to be an open area.

Upon entering the first floor there is a stairwell of approximately eight steps. The administrative offices can be found on this floor and these have not been altered, with the exception of shelves.

On the left side there is an aisle which leads to the bathrooms. Decorative lights were installed here. The bathrooms were decorated and in the ladies room an additional washbasin was added and decorative mirrors were affixed.

On the left side a small piece of wall was also added and it covered an existing hole which gave access to the main room. This had the effect of creating a small lobby. At the end a decorative door was also installed.

Discotheque Area

A decorative wall of architectural aspect was added in this area, it is situated behind the lobby which can be reached by the front door.

The dance floor was decorated and a new floor surface added; the size is the same as before. A new electronic sound system was installed in this area and was completely decorated, but this area did not undergo any structural changes or new divisions. The dance area nor the seating area has suffered any changes.

New lights were also installed in this area and the electrical wiring was installed in a decorative manner. Additional electrical circuits were installed which connected to a separate system which in turn connects to the central system which existed before the redecoration.

A new sound amplifying system was also installed and (4) emergency lights, Exit signs on the three main entry-exit doors, were installed.

The water system has remained the same.

There are three fire extinguishers on the first floor and it also contains a bar which was also redecorated.

In general terms, the interior part of the first floor was decorated to make it attractive to the eye.

In order to fully appreciate the effects of sound, the equipment was put to work at full blast and the general consensus of all those present was that it presented no problem, since it can hardly be heard outside the building.

Be it notified.

In San Juan, Pto. Rico, October 20, 1978.

WILFREDO ALICEA LOPEZ
Judge

I HEREBY CERTIFY:

That on the 24th of Oct., 1978 I sent a copy of this Sight Inspection Report to Attorney Aida Franceschini, Rules and Permits Adm., Minillas Governmental Center, Stop 22, Santurce, P.R., Attorney Ralph Vallone, Jr., Banco Central Building, Of 1003, 221 Ponce de Leon Avenue, Hato Rey, P.R. 00919; and Attorney Gilberto Oliver Vazquez, Fomento Building 640, 268 Ponce de Leon Avenue, Hato Rey, P.R. 00917

LIDIA R. DIAZ
General Secretary
By: Maria E. Santiago (signature)
Asst. Secretary

Appendix F—Report on RPA Agreement Denying Permit.

COMMONWEALTH OF PUERTO RICO

RULES AND PERMITS ADMINISTRATION

San Juan Regional Office

Translation

78-79-F-654—

REPORT ON AGREEMENT ADOPTED BY THE DIRECTOR OF THE SAN JUAN REGIONAL OFFICE

Pending consideration of the San Juan Regional Office is a request for use permit submitted by Mr. John Seath for the operation of a discotheque (Night Club) in a building located at 150 Cristo Street, Old San Juan.

The building for which the use permit is being requested is located within the limits of a district which has a classification of Commercial C-3, according to the Zoning Map presently in effect for the Municipality of San Juan.

Pursuant to the provisions of Item 4, Section 15.02 of the Zoning Rules presently in effect, the proposed usage may be permitted in a district with this classification, if all the requirements needed for this particular district are met and complied with.

The proposed location is within the limits of the Old San Juan Historical Zone.

Pursuant to the provisions of Law 374 of May 14, 1949, as amended, the endorsement of the Institute of Culture of Puerto Rico must be obtained for any construction or use permit within this zone.

The aforementioned endorsement has not been submitted to this Administration.

The business which we are now considering has been operating without having obtained the pertinent use permit, in open violation of the provisions of Law 76 of June 24, 1975; thereby also creating an unsafe environment, undermining and adversely affecting the area where it is located.

Pursuant to the provisions of Article 9, subparagraph B of Law No. 76 of June 24, 1975 (Organic Law of the Rules and Permits Administration) the Administration may deny any request for a use permit in any district or zone whenever very special characteristics arise which may hinder the application of the regulatory provisions which govern the same as to the protection of the general welfare and taking into consideration facts such as health, security, order, defense, economy, population, absence of facilities or public improvements, a more adequate use of the land or environmental conditions, aesthetic or exceptional beauty.

In harmony with the aforegoing and considering all the facts and circumstances involved in this case, the Director of the Regional Office of San Juan of the Rules and Permits Administration pursuant to the provisions of Law No. 76 of June 24, 1975, hereby DENIES the requested use permit for the operation of a discotheque (Night Club) at the aforementioned address.

Any affected party may file an appeal before the Board of Appeal on Construction and Property, within thirty (30) days from the date of its notification; to its address, Box 41118, Santurce, Puerto Rico 00940.

RULES AND PERMITS ADMINISTRATION

By: ENG. MOISES JORDAN MILERO
REGIONAL DIRECTOR

I HEREBY CERTIFY: That the preceding is a true and exact copy of the agreement adopted by the Director of the Regional Office of San Juan of the Rules and Permits Administration on Dec. 15, 1978.

I issue this copy under my signature and seal and inform all interested parties to their address of record.

In San Juan, Puerto Rico, this Dec. 15 1978

(signature)

ANA ESTHER OYOLA
AUTHORIZED OFFICER

(Herein appears the
seal of the R.P.A.)

Appendix G—Rehearing Motion Before RPA.

COMMONWEATH OF PUERTO RICO

RULES AND PERMITS ADMINISTRATION

Regional Office of San Juan

Translation

IN RE:	CASE NO. 78-79-F-654-SPP
	ON:
JOHN SEATH	SAN JUAN SAN JUAN
	DISCOTHEQUE
150 Cristo Street	USE PERMIT
San Juan, Puerto Rico	

Petitioner

WRIT OF RECONSIDERATION

TO THE HONORABLE ADMINISTRATION:

Petitioner apears through its undersigned attorney and respectfully STATES, ALLEGES AND REQUESTS:

1. That petitioner's request for a use permit to operate a discotheque in a building located at 150 Cristo Street in San Juan, Puerto Rico was denied by the Rules and Permits Administration on December 15, 1978.

2. That the document entitled Report on Agreement Adopted by the Director of the Regional Office of San Juan, enumerated 78-79-F-654-SPP, indicates that the same was sent to Petitioner on December 15, 1978.

3. That pursuant to the provisions of Law Number 76 of June 24, 1975, Article 25, 23 L.P.R.A. 71X, we hereby file a reconsideration of said denial, including copy of the Notification of Denial, and request that the same be revoked and the use permit requested be granted.

4. This request is based on the legal right guaranteed by the Constitution of the United States and the Constitution of the Commonweath of Puerto Rico, to open a discotheque, which commercial activity is neither illegal nor inmoral, nor undesireable at the aforementioned location and for which this use permit has been requested. This right cannot be affected by governmental entities, claiming to comply with any law or regulation unless said laws or regulations are applied and enforced in an equitable and just manner.

5. Pursuant to the aforegoing, we consider that the application of the regulations presently in force to petitioner caused an unreasonable prohibition or restriction of his right to enjoy and use his property. Let us consider:

(a) The building where the discotheque is operating has a zoning classification of C-3, and pursuant to Rule 4 of 1969 of the Planning Board, as amended, the requested usage is allowed.

(b) The building in question enjoys the following permits:

1. Use Permit dated February 8, 1978 issued by the Rules and Permits Administration, San Juan Office.

2. Alcoholic Beverage License dated July-September 1978

3. Permission from the Tourism Company to include the Le Chatelet Restaurant in its "Que Pasa" magazine

4. Certification of Consultation on Historical Zone

5. Municipal Patent License

6. License from the Department of Health dated March 31, 1978

7. Endorsement from the Fire Department of Puerto Rico

8. Endorsement from the Institute of Culture of Puerto Rico

9. Endorsement from the Municipality of San Juan with respect to solid waste disposal.

(c) The designing plans are in accordance with the area's aesthetic appeal

(d) The manner in which the business operates insures the tranquility and security of the area.

(e) The usage of the property in question does not involve loud noises, offensive smells or excessive illumination from signs.

(f) A parking area has been provided for the discotheques' clients which area does not hinder pedestrian transit on the sidewalks nor vehicular transit in the area.

(g) The hours of operation of the business are reasonable and do not exceed the limits established by the regulations presently in force for these cases.

6. In addition to the aforegoing, it is pertinent to point out that Honorable Judge Wilfredo Alicea Lopez, in his Sentence of September 22, 1978, in his Determinations and Conclusions of

Fact, specifically Fact 14 of Case No. 78-1620 of the Rules and Permits Administration, represented by its Administrator Engineer William Salva Matos and Edmundo Colon Arizemendi vs. John Seath, states:

> "We must then conclude, as a question of fact that of the endorsements which the R.P.A. requests, the only necessary one is that from the Institute of Culture and this must be conditioned to whether the awnings and planters in any way hamper the architectural design of the exterior of the building and follow the general pattern for Old San Juan . . ."

7. As of this date, said objects have been removed in order to comply with the requirement imposed by the Honorable Court and the demands of the Rules and Permits Administration on this particular matter.

8. The denial of the permit compels us to close the area being used as a discotheque, which will cause Defendant to fire a large number of employees and will also cause him great economic and moral damages.

WHEREFORE Petitioner in this case respectfully requests from the Honorable Rules and Permits Administration to set an administrative hearing as soon as possible in order to fully discuss this Reconsideration and to set aside its decision of December 15, 1978.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, December 29, 1978.

(signature)
RALPH VALLONE, JR.
LUIS F. HERNANDEZ VELEZ
Banco Economias Bldg. Floor 1003
Hato Rey, Puerto Rico 00919
Tel: 754-8860-8861

Appendix H—Informative Writ of June 6, 1979.

Translation

COMMONWEATH OF PUERTO RICO

RULES AND PERMITS ADMINISTRATION

Regional Office of San Juan

IN RE:	CASE NO. 78-79-F-654-SPP
	ON:
JOHN SEATH	SAN JUAN SAN JUAN DISCOTHEQUE
150 Cristo Street	USE PERMIT
San Juan, Puerto Rico	

Petitioner

INFORMATIVE WRIT

TO THE HONORABLE ADMINISTRATION:

Now appears Petitioner through his undersigned attorney and respectfully STATES, ALLEGES AND PLEADS:

1. Petitioner's request for a Use Permit to operate a discotheque in a building located at 150 Cristo Street in San Juan, Puerto Rico, was denied by the Rules and Permits Administration on December 15, 1978.

2. By virtue of the provisions of Law Number 76 of June 24, 1975, Article 25, L.P.R.A. 71X, a writ of reconsideration was filed on December 29, 1978 requesting the reconsideration of said denial and the issuance of the Use Permit.

3. On May 11, 1979, this party was again informed that the discotheque was being operated without the necessary Permit.

4. The aforementioned act is incongruous and surprising in view of the judicial and administrative developments in this case since the discussion of the facts alleged in this writ are still pending before the courts of Justice of this country and since we have not received any answer to the writ of reconsideration mentioned in the preceding second paragraph.

5. We are unaware of the motives behind this notification and do not understand the message which is being transmitted, and state herein our position that we are willing to comply with any reasonable and legal requirement and that we reject any capricious and unreasonable practice which may prejudice our best interests.

WHEREFORE we respectfully request that this Honorable Administration consider this writ and stop any administrative action which may be addressed to creating a conflict with the judicial and administrative actions presently being heard.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, June 6, 1979.

(signature)
RALPH VALLONE, JR.
LUIS F. HERNANDEZ VELEZ
Banco Central and Economias Bldg.
Suite 1003
221 Ponce de Leon Avenue
Hato Rey, Puerto Rico 00919

Tel. 754-8860

Appendix I—Informative Motion.

Translation

IN THE SUPERIOR COURT OF PUERTO RICO

SAN JUAN SECTION

REGULATIONS AND PERMITS ADMINISTRATION	Civil Number: PE 78-1620(903)
Petitioner-Appellant	RE: COMPLAINT UNDER SPECIAL PROCEDURE, ARTICLE 28
v.	OF ACT 76 OF JUNE 14, 1975
JOHN SEATH	23 LPRA 72
	(Appeal from the District
Respondent	Court, San Juan Section,
ALBERTO DEL TORO, ET ALS	#78-3547)
Intervenors	

INFORMATIVE MOTION

TO THE HONORABLE COURT:

NOW APPEARS Respondent through his undersigned attorneys and respectfully exposes, alleges and prays:

1. On June 6, 1979, the undersigned attorneys filed before the Honorable Regulations and Permits Administration of Puerto Rico a Writ which is enclosed and made part as Exhibit "A" of this motion.

2. We request that this Honorable Court takes notice of the attitude and behavior of the mentioned agency against Respondent inasmuch as said behavior has originated the issue of the case at bar.

WHEREFORE, we respectfully request this Honorable Court takes notice on the above subject.

RESPECTFULLY SUBMITTED:
In San Juan, Puerto Rico, on June 7, 1979.

CERTIFICATION: As of this same date we are sending an exact copy of this motion to Ms. Norma del Valle, Caleta de San Juan #53, Apt. 3, San Juan, Puerto Rico, 00902 and to Maretsa Rodriguez Portela, Esq. RPA, Box 41179, Santurce, Puerto Rico.

(signed)
RALPH VALLONE, JR.
LUIS FRANCISCO HERNANDEZ VELEZ
Banco Central y Economias Building
10 floor, Office 1003
Hato Rey, Puerto Rico, 00910
Tel: 754-8860 8861

Appendix J—Superior Court Judgment of May 28, 1980.

Translation

IN THE SUPERIOR COURT OF PUERTO RICO

SAN JUAN SECTION

RULES AND PERMITS ADMINISTRATION, etc.,

Plaintiffs-Appellants,

vs.

JOHN SEATH,

Defendant-Appellee,

ALBERTO DEL TORO, etc.,

Intervenors-Appellants.

Civil No. PE78-1620 (906) on: Special Procedure

(Appeal from the District Court of San Juan, Case 78-3547)

JUDGMENT

The Rules and Permits Adminstration requested the District Court to issue an order against defendant, barring him from operating a discotheque at 150 Cristo Street in Old San Juan. The complaint was brought pursuant to the special procedure established in Art. 28 of the Organic Law of the Rules and Permits Administration, 23 LPRA 72. The complaint alleged that the particular usage required a permit from the Rules and Permits Administration and that said permit had not been obtained. Intervenors joined the proceedings at a later date, in their capacity as neighbors in the vicinity.

After a discovery hearing and a sight inspection, the District Court issued a Resolution in which it momentarily denied the restraining order which had been requested, suggested that certain additional proceedings be held in the administrative forum and retained jurisdiction for ulterior proceedings. The Rules and Permits Administration (RPA) as well as intervenors filed an appeal of said Resolution.

After a study of the allegations of all the parties, we understand that we must dismiss both appeals since this Court understands that the Resolution subject to this appeal is not properly appealable. A reading of the resolution dictated by the District Court clearly demonstrates that said Court did not definitely resolve to deny the issuance of the order being requested, but it merely denied it in that moment, without prejudice to the fact that it could be issued later on. Although the District Court did not expressly state that its reason to deny the order was that the appeal was premature, this is the real reason for its decision. The Resolution of the District Court is not final, pursuant to its own clear terms, and leaves the door open for the concession of a remedy in favor of Plaintiffs at a later date in the judicial proceedings. And only *final* decisions of a court are properly subject to an appeal. See Rule 43.1 of Civil Procedure of 1979, which clarifies the norm with respect to this situation which was already in effect in Rules 43 and 44 of 1958.[1]

Notwithstanding the aforegoing, and faced with the possibility that the resolution was susceptible to appeal, we would like to state our criteria that it should be confirmed in the merits. The District Court, correctly applying the provisions of subparagraph (e) of Article 38, held a hearing to allow Defendant to "oppose any legal defense" and pursuant to the express mandate of that subparagraph conducted a sight inspection. On the

---

[1]The Rules of Civil Procedure are applicable to this appeal, which is governed by "the terms and procedures which govern appeals in ordinary actions", by virtue of the specific mandate of subparagraph (g) of Article 28, which establishes this special procedure.

basis of the evidence which was presented and its own inspection it determined as a question of fact that the enterprise already had a use permit to operate a restaurant-bar and that the alterations made after obtaining said use permit had exclusively been alterations in the *decoration* of the premises, without having affected any structural changes nor extensions or remodelations. However, it recognized that the use permit for a bar-restaurant did not itself authorize the use of the premises as a discotheque, even though said usage is permitted in a C-3 zone, and that it was necessary to obtain a new use permit.

The District Court determined that since an extension had not taken place, the requirements of the RPA that it had to obtain a permit prior to an extension which had not occurred, was not applicable. It also determined, as a question of fact, that all the requirements which the RPA had required for the concession of the new permit were either inapplicable or had already been complied with, with the exception of the endorsement of the Institute of Culture as to changes in the external appearance of the building.

Contrary to what has been suggested in this appeal, we understand that the District Court had sufficient discretion pursuant to the statutes to deny the order which had been requested and which would have had the effect of immediately and permanently prohibiting the operation of the discotheque, subject to contempt.

Article 28 of the RPA's Organic Law has obvious antecedents in Article 12 of the Planning Law of 1946, 23 LPRA 42. Although this new article is a bit more comprehensive, since it applies to situations in which a structure is being *used* in violation of the Planning rules and regulations, its language is practically identical to the previous Article 12. And the aforementioned Article has been qualified as a "similar action" to that of an injunction in *Torres v. Rodriguez*, 101 DPR 177, 184 (1973).[2] Therefore, we understand that the Court, in issuing orders pursuant to this article, should be guided by the general principles

[2] We have not found, nor have the parties mentioned, any opinion of the Supreme Court which interprets this new article 28.

of jurisprudence pertaining to injunctions. We are then unable to agree with the position adopted by appellants that the District Court could only determine whether or not a specific use for which no specific permit existed was being carried on, and that if it so determined issue the restraining order. This behavior would not only be incompatible with a statute that expressly authorizes defendant to "oppose any legal defense", but would be incompatible with the general doctrine of injunction, which has always recognized the court's discretion and its duty to weigh the interests in conflict and which has never conceived the role of the court as one of a robot which has not discretion or capacity to judge. On the contrary, the law has always recognized that in determining whether or not to issue an injuction the Court should trace a fine balancing line of the interests at hand. *Ortiz Cabrera vs. Court,* 101 D.P.R. 612, 618 (1973). *Ports Authority v. Court,* 103 D.P.R. 903, 909 (1975) recognizes that even after an injuction has been issued, its continued enforcement depends on the situation of facts which may exist at a given moment. *A fortiori* when courts issue or deny an injunction they must carefully consider the particular facts present at that moment.

Pursuant to the aforegoing, we are of the opinion that the District Court did not incur in any error when it essentially resolved that the order which was being requested against Defendants was premature, and retained jurisdiction over the matter while certain additional proceedings were being considered in the administrative forum.

Assuming that we had jurisdiction in this case, we would confirm the appealed sentence, without prejudice to the fact (naturally) that once the proceedings in the administrative process have been finalized, defendant should request that the proceedings in the District Court be again initiated, if it should consider it necessary.[3]

REGISTER AND NOTIFY.

San Juan, Puerto Rico, May 28, 1980.

(signature)
ANGEL G. HERMIDA
Superior Court Judge

[3] In many documents presented before this Court facts which have occurred after the Resolution dictated by the District Court have been mentioned. We understand that the court of appeals is not authorized to receive evidence on these facts. These can be presented at the proper moment in the District Court, if the proceedings are reinitiated in this Court.

Appendix K—Supreme Court Resolution of November 4, 1981.

Translation

IN THE SUPREME COURT OF PUERTO RICO

RULES AND PERMITS ADMINISTRATION, etc.,

Plaintiff,

vs.

JOHN SEATH,

Defendant-Appellee,

ALBERTO DEL TORO and others,

Intervenors-Petitioners.

No. 0-80-328

Certiorari

RESOLUTION

San Juan, Puerto Rico, November 4, 1981

Considering that the sentence of the District Court, San Juan Section, which denied the injunction order because it was premature, was dictated on September 22, 1978 and that three years have elaped, and that additional administrative proceedings may have taken place since that date, which may fundamentally alter the situation on which the request for injuction is made, if it is to proceed, and faced with the necessity of updating the facts; the District Court is hereby ordered to set a

hearing for all parties in order that they may present evidence stating the status of the litigation on this date, and that within a term of thirty (30) it send us a certification on this matter stating ample determinations of facts and conclusions of law as well as the award which should be granted pursuant to the new determinations, and on which this District Court reserved jurisdiction. Once this Court is informed of the present status of this case, it shall issue the corresponding judgment on the request for a Certiorari.

The Court agreed the above and the General Secretary certifies this Resolution. Judge President Trias Monge and Associate Judges Martin and Negron Garcia did not intervene.

LADY ALFONSO DE CUMPIANO
General Secretary

Appendix L—Supreme Court Resolution of December 22, 1981.

Translation

IN THE SUPREME COURT OF PUERTO RICO

RULES AND PERMITS ADMINISTRATION, etc.,

Plaintiff,

vs.

JOHN SEATH,

Defendant-Appellee,

ALBERTO DEL TORO *et al.*,

Intervenors-Petitioners.

PE 78-1620 (906)
No. 0-80-328 CERTIORARI

RESOLUTION

San Juan, Puerto Rico, December 22, 1981

After hearing intervenors motion filed December 4, 1981, which was accompanied by a "Report on Agreement Adopted by the Director of the Regional Office of San Juan" of the Rules and Permits Administration, dated December 15, 1978 and notified on that same date, and after intervenors have admitted that said report was known by Defendant-Appellee and

that said Defendant filed a reconsideration of the same through motion dated June 6, 1979, and not appearing from the record before us if the decision of the Director of the Regional Office of San Juan denying the use permit is final and binding, we transfer this matter to the District Court, San Juan Section, so that it render its report on what administrative action has been taken and if said proceeding has concluded, it proceed pursuant to our Resolution of November 4, 1981.

The Court in full takes this decision and it is certified by the Secretary. President Judge Trias Monge and Associate Judges Martin and Negron Garcia did not intervene.

LADY ALFONSO DE CUMPIANO
Secretary

herein appears the certification
of the court dated December 23, 1981.

Appendix M—Supreme Court Resolution of May 27, 1981.

IN THE SUPREME COURT OF PUERTO RICO

REGULATIONS AND PERMITS ADMINISTRATION (RPA),

Complainant,

v.

JOHN SEATH,

Respondent-Appellee,

ALBERTO DEL TORO, *et als.*,

Intervenors-Petitioners.

Number 0-80-328 CERTIORARI

RESOLUTION

San Juan, Puerto Rico, on this 27th day of May, 1982.

The District Court, San Juan Section must report within ten days after receiving notification of this Resolution the information requested in our Resolution of December 22, 1981.

The Court has so ordered and the Clerk of the Court has certified it. The Chief Justice, Mr. Trias Monge and the Associate Justice, Mr. Negron Garcia, did not intervene.

(signed)
LADY ALFONSO DE CUMPIANO
Clerk of the Court

Appendix N—District Court Order of June 15, 1982.

Translation

IN THE DISTRICT COURT OF PUERTO RICO
SAN JUAN SECTION

REGULATIONS AND PERMITS ADMINISTRATION (RPA),

Complainants,

v.

JOHN SEATH,

Respondent.

Civil Number 78-3547
Re: Special Proceeding Art. 28, Act 76 of June 24, 1975

Order

On this date, June 15, 1982, we held a conference in chambers with the attorneys of the parties. Francisco Borges Ruiz, Esq., Attorney for the Regulations and Permits Administration (RPA) appeared. Respondent John Seath was represented by Angel Cruz Cruz, Esq. Also present was Gilberto Oliver Vazquez, Esq., representing the intervenors.

For the purposes of establishing the present issues the appearing attorneys stipulated the following facts:

1. On December 15, 1978 RPA, through its *Report about the Agreement Adopted by the Director of the Regional Office of*

San Juan in case number 78-79-F-654 SPP, denied the use permit requested to operate a discotheque in a building located at Cristo Street number 150, in Old San Juan. (A certified copy of the report is attached, Exhibit A).

2. Respondent John Seath requested in writing on December 29, 1978 the reconsideration of said denial and petitioned that an administrative hearing be scheduled before RPA. (A copy of the Respondent Reconsideration Writ is attached, Exhibit B).

3. By communication dated May 11, 1979, RPA notified again John Seath that he was operating a discotheque business without having obtained the corresponding permit. (A copy of the communication is attached, Exhibit C).

4. Through an Informative Motion dated June 6, 1979, Respondent John Seath answered RPA's communication and informed it that since the case was pending before the Courts of Justice he requested that any administrative action be paralyzed. (A copy of the Informative Motion is attached, Exhibit D).

5. It does not appear that RPA made any determination nor issued any resolution with respect to the Reconsideration Motion submitted by respondent. Respondent John Seath did not appeal to the Board of Appeals of Constructions and Subdivisions of the denial issued by RPA on December 15, 1978.

6. Through a letter dated July 20, 1978 the Institute of Culture of Puerto Rico through Mr. Luis M. Rodriguez Morales, Executive Director, notified that it lacked jurisdiction with respect to the interior decoration—that does not mutilate the architecture of the building—at the historical zones of Puerto Rico because it is not so contemplated in Regulation Number 5 of the Planning Board. By letter dated September 19, 1978 the Institute of Culture of Puerto Rico stated that in their files there was no request for the works that took place at the building in Cristo Street No. 150 and that the Institute had not granted a

permit for said works. (Letters of July 20 and September 19, 1978 are attached, Exhibits E and F).

7. To this date (June 15, 1982) the discotheque San Juan San Juan continues operating. The restaurant business, on the contrary, is not operating anymore.

Once the stated stipulation of facts were made, certain doubts arose among the attorneys for the parties with respect to the interpretation and scope of the Resolutions of the Honorable Supreme Court of Puerto Rico of November 4, 1981, December 22, 1981 and May 27, 1982.

Before praying for any action or remedy from this Court, the Attorneys for the parties agreed to file a motion subscribed by all before the Honorable Supreme Court of Puerto Rico, no later than Friday 18, 1982, requesting clarification of the mentioned resolutions.

Be this order notified to the Honorable Supreme Court of Puerto Rico, case number 0-80-328, Certiorari.

Be this order notified to the San San Section of the Honorable Superior Court, case number CS-PE-78-1620 (906).

BE IT NOTIFIED.

In San Juan, Puerto Rico, on June 15, 1982.

(signed)
JOSE E. BROCO OLIVERAS
District Court Judge

Appendix O—Motion Requesting Clarification.

Translation

IN THE SUPREME COURT OF PUERTO RICO

RULES AND PERMITS ADMINISTRATION, etc.,

Plaintiff,

vs.

JOHN SEATH,

Defendant-Appellee,

ALBERTO DEL TORO, and others,

Intervenors and Petitioners.

Case No. 0-80-328 on: Certiorari

MOTION REQUESTING THAT THE ORDER BE SET ASIDE AND CLARIFICATION OF THE SENTENCE

To the Honorable Supreme Court of Puerto Rico:

Now appears the undersigned attorney, by special appearance before this Honorable Supreme Court and in representation of Defendant-Appellee, respectfully requests and states:

1. Defendant-Appellee has contracted the professional services of this attorney to represent him in the appeal before the Honorable Supreme Court of the United States, since he understands that his fundamental constitutional rights have been violated without due process of law.

2. The decisions, opinions and sentences of this Honorable Supreme Court are accorded the greatest respect and deference by this attorney and we are not accustomed to frivolously appeal a case.

3. After studying the record in this case and discussing it with Defendant's legal representative before this forum, we have doubts on whether this Honorable Court remanded the case to the District Court to decide whether to award the injuction retaining discretion to decide the merits of the Rules and Permits Administration's petition in all its extremes, including the administrative agency's contempt of the Court's order, which was never revoked either by the Superior Court nor by this Honorable Supreme Court, and the finality of the order of the RPA which pursuant to the Resolutions of December 22 and November 4, 1981 should have been decided by the District Court and which were not because there was a discrepancy as to their scope. Due to the manner in which the sentence is phrased, we must understand that this Honorable Court exercised its authority in the first instance and already resolved the controversy as to the finality of the administrative act which collaterally arose from the true issues in controversy, in which case we respectfully understand that the District Court would be limited in its determination.

4. The finality of the state's action is necessary in order to file an appeal before the Federal court.

5. Although this Honorable Court may consider its sentence clear, with all respect and responsibility we state that it would be a professional risk to assume an interpretation which could prejudice the rights of my client vis-a-vis another interpretation which would make an appeal frivolous.

6. We are aware that this Honorable Court has denied the request of our distinguished colleague Angel Cruz Cruz, which requests that the Order be set aside pending the appeal in this case but we consider it meritorious to request this Honorable Court

to stay the same until the sentence is clarified, as we anticipate that the court itself could have some doubts as the appearing lawyers do.

WHEREFORE, we respectfully request that the Sentence of June 30, 1982 be clarified; and that in the interim the mandate of execution of the Order sent to the Superior Court dated August 3, 1982 be stayed, which Order has yet to be executed as of this date.

I certify that on this same date I have sent a copy of this Motion to Attorney Maretsa Rodriguez Portela, Legal Division, Rules and Permits Administration, Box 41179, Minillas Station, Santurce, P.R. 00940 and to Attorney Gilberto Oliver Vazquez, Box J, Hato Rey, Puerto Rico 00919

(signed)
MARIA MILAGROS SOTO
Banco Central and Economias
Office 1115
Hato Rey, Puerto Rico 00917
Tel. 754-1920

Office - Supreme Court, U.S.
FILED
DEC 16 1982
ALEXANDER L. STEVAS,
CLERK

No. 82-714

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

JOHN SEATH,

Petitioner,

v.

REGULATIONS AND PERMITS ADMINISTRATION OF THE COMMONWEALTH OF PUERTO RICO

Respondent.

On Petition For A Writ Of Certiorari From The Supreme Court Of Puerto Rico

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

MIGUEL PAGAN
Acting Solicitor General of Puerto Rico
REINA COLON DE RODRIGUEZ
Assistant Solicitor General
P.O. Box 192
Department of Justice
San Juan, Puerto Rico 00902

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-714

JOHN SEATH,

Petitioner,

v.

REGULATIONS AND PERMITS ADMINISTRATION OF THE COMMONWEALTH OF PUERTO RICO

Respondent.

On Petition For A Writ Of Certiorari From The Supreme Court Of Puerto Rico

---

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

TO THE HONORABLE COURT:

Comes the respondent, the Regulations and Permits Administration, hereinafter named as RPA, through its undersigned attorneys, and respectfully prays that the Writ of Certiorari requested by Petitioner in this case be denied for lack of jurisdiction.

JUDGMENT ORDER BELOW

Review is requested as to the Judgment of June 30, 1982 of the Supreme Court of Puerto Rico. (Appendix A to the Petition of Certiorari).

COUNTER-STATEMENT OF THE FACTS

The statement of the facts as presented in the Petition for Certiorari is at times imprecise, incomplete, or both, for which reason respondent wishes to clarify some points which are highly relevant in the resolution of this case.

On February 8, 1978, RPA issued to Mr. John Seath, petitioner herein, a permit to operate a bar restaurant in the first and second floor of the building located at 150 Cristo Street, Old San Juan, Puerto Rico. Said building is owned by the Puerto Rico Industrial Development Company (PRIDCO) and leased to Petitioner, d/b/a Le Chatelet, Inc., on June 15, 1977.

The referred to building is located in the historic zone of the Old San Juan, Capital of Puerto Rico, in a sector classified as a district C-3 according to the Zoning Map of San Juan.

On June 30, 1978 Petitioner applied to RPA for a permit to operate a discotheque rather than a bar-restaurant in that same building.

On July 5, 1978 John Seath was informed by RPA that in order to continue the review of his application for a permit, he had to file before RPA: evidence as to whether the alteration or remodelation of the building was made according to a permit of RPA and, the endorsement of four public agencies mentioned in the written communication.

On September 14, 1978, pending the decision of RPA as to the permit to operate the discotheque, Petitioner opened the discotheque to the public.

Since Petitioner was operating said discotheque without the corresponding permit, on September 15, 1978, pursuant to the provisions of Section 26 of the Act Number 76 approved on June 24, 1975 (23 L.P.R.A., Sec. 72), filed an Injunction Petition before the District Court of San Juan, requesting an order directed to John Seath to cease and desist of illegally using the property as a discotheque. The TRO was issued on that same date. But upon request of John Seath, alleging that said paraly-

zation would cause him economic loss during that week-end (it was Friday), and the unemployment of at least fifteen persons, said TRO was set aside and a hearing was scheduled for September 18, 1978. The District Court allowed the intervention of a group of residents of the neighborhood that is located close to the building on which the discotheque was being operated.

A hearing took place on September 18, 1978 and an on-site inspection of the facilities was conducted on September 19, 1978, during the day hours.

On September 22, 1978 the District Court issued a Resolution and Order in the case. It concluded that in order to permanently operate a discotheque, John Seath had to obtain the necessary permit from RPA pursuant to the provisions of Section 3.02 of Planning Regulation No. 4, as amended (See page 15(a)) of the Appendix to the Petition for Certiorari of this case). Despite of that conclusion the District Court did not issue the injunction prohibiting John Seath from operating the discotheque. It reserved its jurisdiction for ulterior proceedings in the case and reverted the matter to RPA to decide as to the petition for a permit to operate the discotheque in accordance with the recommendations of said Court.

Both RPA and the intervenors, appealed the Resolution and Order of the District Court to the Superior Court of the Commonwealth of Puerto Rico, San Juan Part. RPA raised the issues that the District Court erred by invading the powers of RPA and by denying the injunction notwithstanding its conclusion that John Seath had to obtain a permit from RPA to operate the discotheque.

Since the matter regarding the concesion or denial of the use permit was reverted by the District Court to RPA for its determination, RPA acted as to that aspect of the case.

On December 15, 1978 RPA gave notice to John Seath that the permit for the operation of a discotheque had been denied because he had not submitted the favorable recommendation of

the Institute of Puerto Rican Culture for the requested building use permit, as established by Act No. 374 of May 14, 1949 as amended. (23 L.P.R.A., Sec. 161).[1] John Seath was advised that he may file an appeal before the Board of Appeals on Construction and Property, within thirty (30) days from the date of notification to its addresses, Box 41118, San Juan, Puerto Rico. (See page 23(a) of the Appendix to the Petition for Certiorari).

John Seath did not file a notice of appeal before the Board of Appeals as provided under Section 31 of the Act No. 76 of 1975, supra, (23 L.P.R.A., Sec. 72c), where a public hearing is provided to review the decisions of RPA denying a building use permit.[2] John Seath did not either file any motion or writing whatsoever before the Superior Court, where the appeal of the injunction petition was pending. Apparently, he preferred to continue the illegal operation of the discotheque without permit pending the appeal of the injunction procedure before the Superior Court.

On December 29, 1978 he filed a petition for a reconsideration of the denial of the use permit requesting a public hearing under Section 25 of Act No. 76. supra, (23 L.P.R.A., Sec. 71x). But said Section is not applicable to resolutions of RPA regarding the denial or issuance of use permits. It applies only to its orders to cease and desist and to do or not to do.

---

[1] Section 1 of the Act No. 374, supra, provides, inter alia, as follows:

> "In the case of an ancient or historic zone, the Regulations and Permits Administration shall require the favorable recommendation of the Institute of Puerto Rican Culture before authorizing any building or use permit."

[2] In the Petition for Certiorari he accepts that fact when he states at page seven (7) of that Petition: ". . . John Seath did not appeal to the Appellate Board of the agency from the Administrator's decision . . ."

On May 11, 1979 RPA gave notice to John Seath that he was illegally operating a discotheque because he did not have a permit.

On June 6, 1979 John Seath filed an informative motion before RPA requesting it to stop any administrative action which may create conflict with the judicial and administrative pending action. He also filed a copy of said motion before the Superior Court where the appeal of the injunction action was pending.

On May 28, 1980 the Superior Court of Puerto Rico dismissed the appeal on the basis that the District Court's Resolution was not final and therefore not appealable. (See page 34(a) of the Appendix to the Petition for Certiorari).

On June 6, 1980 the intervenors filed a Petition for Certiorari before the Supreme Court of Puerto Rico.

On June 10, 1980 John Seath filed an Opposition to the Petition for Certiorari.

RPA did not participate in the Certiorari proceedings because it understood that since the Superior Court decided that it did not have jurisdiction in the case to review the Resolution of the District Court due to the fact that it was not final, the District Court, which retained jurisdiction in the case, was the only one that could make future determinations in the case.

On November 4, 1981 the Supreme Court of Puerto Rico issued a Resolution stating that since on September 22, 1978 the District Court denied the injunction because it was premature, that three years had elapsed from that date, and additional administrative proceedings may have taken place, which may fundamentally alter the situation on which the request for injunction was made, it was necessary to update the facts. Consequently, it ordered the District Court to set a hearing for all parties in order that they could present evidence stating the status of the litigation. It ordered the District Court to present to the Supreme Court a certification of that matter within the terms of thirty (30) days, stating ample determinations of facts

and conclusions of law as well as the award which should be granted pursuant to the new determinations, and on which said District Court reserved jurisdiction. Thereafter, the Supreme Court would issue the corresponding decision on the request for a Certiorari. (See pages 38-39 of Appendix to the Petition for Certiorari).

On December 4, 1981 the intervenors filed before the Supreme Court an informative motion accompanied by the document of December 15, 1978 on which RPA denied to John Seath the permit to operate a discotheque in the aforementioned building, and where he was advised that he could appeal to the Board of Appeals or Construction and Property within thirty (30) days from the date of its notification.

On December 22, 1981 the Supreme Court issued a Resolution transfering to the District Court the issue on whether or not the administrative action as to the use permit had concluded and, ordering the District Court to proceed pursuant to the Resolution of the Supreme Court dated November 4, 1981.

On May 27, 1982 the Supreme Court of Puerto Rico issued another Resolution ordering the District Court to report to the Supreme Court within ten (10) days after receiving the notification of said Resolution, the information requested in the Resolution of December 22, 1981.

On June 15, 1982 the District Court issued the Order included as Appendix N to the Petition for Certiorari filed before this Honorable Court. Said Order contains several facts stipulated by the parties.

Among said facts, it was stipulated that John Seath did not appeal to the Board of Appeals the denial of the use permit requested to operate the discotheque,[3] and also, that he was still operating the discotheque.

---

[3] The right to appeal is provided under Section 31 of Act No. 76, supra (23 L.P.R.A., Sec. 72c(a), and John Seath was advised of that right.

On June 30, 1982 the Supreme Court of Puerto Rico issued the Judgment which is now object of the present Petition for Certiorari.

REASONS FOR DENYING THE WRIT

At the outset, it is clear that this Honorable Court lacks jurisdiction to entertain the present case because the Judgment of the Supreme Court of Puerto Rico of June 30, 1982 is not a final judgment.[4]

The jurisdiction of this Court was invoked under 28 U.S.C., Sec. 1258 (3).

Said statute states that:

> "*Final judgments or decrees* rendered by the Supreme Court of the Commonwealth of Puerto Rico may be reviewed by the Supreme Court as follows:
>
> (1) .....
>
> (2) .....
>
> (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of the Commonwealth of Puerto Rico is drawn in question on the ground of its being repugnant to the Constitution,

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[4] In addition, no federal constitutional question is involved in the present case. John Seath never had a permit to operate a discotheque, consequently the denial of the use permit for that purpose did not deprive him of any property right. On the other hand, if he understood, *arguendo*, that he was deprived of any right he could have appealed the denial of the permit to the Board of Appeals, supra, where a public hearing is provided for persons affected by a denial of a use permit. Thereafter he could have requested review of the decision of the Board of Appeals to the Superior Court.

Moreover, since the case was remanded for a final adjudication of the controversy, he will have the opportunity to raise and prove, if he can, that he has been deprived of any right.

> treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution, treaties, or statutes of, or commission held or authority exercised under, the United States." (Emphasis added).

Since 28 U.S.C., Sec. 1258 permits this Honorable Court to review only final judgments or decrees of the Supreme Court of Puerto Rico, it is proper to analyze the Judgment of said Court which is the object of the Petition for Certiorari, to determine if it is or not a final judgment.

The Judgment of the Supreme Court of Puerto Rico reads as follows:

> "Considering as firm the administrative decision of the Regulations and Permits Administration (Dec. 15, 1978) that denied a use permit requested by Petitioner-Respondent Seath to operate the discotheque (night club) "San Juan San Juan"; and that from the updated statement of facts as of June 15, 1982, submitted by District Judge, Mr. Brocco Oliveras, it appears that the restaurant business closed but the discotheque that was presented as a dependency of the former continues to operate, and that four years after the District Court's judgment (Sept. 22, 1978) the conditioned use permit has not been granted by RPA, a possibility that then stayed a concrete adjudication of the injunction petition prohibiting the discotheque operation, to which end the District Court retained jurisdiction for procedural warranted action.
>
> We annul the Superior Court (May 28, 1980) judgment on review *and remand the case to the District Court for final adjudication of the controversy according to the present status of facts.*" (Emphasis added)

From a glimpse of the above cited judgment it can be appreciated that it is not a final judgment because it does not finally decide the central controversy in the case. On the contrary, the Supreme Court of Puerto Rico remands the case to the District Court for the final decision of the real controversy, namely whether or not it is proper to issue a permanent injunction prohibiting the discotheque operation under the status of

facts (not considered by the District Court when it originally retained jurisdiction for ulterior proceedings in the case).

The fundamental question with respect to when a judgment is final is whether it can be said that there is nothing more to be decided. *San Diego Gas & Electric Co.* v. *San Diego*, 450 U.S. 621 (1981).

In the case of *San Diego*, supra, this Honorable Court stated that:

> ". . . The logical course of action for an appellate court that finds unresolved factual disputes in the record is to remand the case for the resolution of those disputes. We therefore conclude that the Court of Appeals decision contemplates further proceedings in the trial court." 450 U.S. at 632.

There are very few circumstances in which a judgment has been considered as a final judgment when there are further proceedings in a lower court to come, as analyzed in the case of *Cox Broadcasting Corp.* v. *Cohn*, 420 U.S. 469 (1975). But the judgment in those circumstances shall be plainly final on a federal issue. The circumstances in the present case are very far from being under any of those exceptions, since no federal issue has been decided neither by the Supreme Court of Puerto Rico nor by the lower court in this case.

The present case only presents a matter of local law. And it has been held repeatedly that the Supreme Court of Puerto Rico should not be reversed in a matter of local law unless the court's determination is "inescapably wrong" or "patently erroneous," *Sancho Bonet* v. *Texas Co.*, 308 U.S. 463 (1940); *De Castro* v. *Board of Commissioners*, 322 U.S. 451 (1944); *C. Brewer P.R.* v. *Corchado*, 303 F.2d 645 (1962); *Acosta-Marrero* v. *Commonwealth of Puerto Rico*, 275 F.2d 294 (1960); *Fullana Corp.* v. *P.R. Planning Board*, 257 F.2d 355 (1958); *Marquez* v. *Aviles*, 252 F.2d 715 (1958); *Iglesias Acosta* v. *Secretary of Finance of Puerto Rico*, 220 F.2d 651 (1955); *Sagastivelza* v. *P.R. Ins.*, 171 F.2d 563 (1949); *Compose* v.

Central Cambalache, Inc., 157 F.2d 43 (1946). See also *Fornaris* v. *Ridge Tool Co.*, 400 U.S. 41 (1970).

CONCLUSION

Inasmuch as the Judgment of the Supreme Court of Puerto Rico is not a final judgment, and since the present case only presents a matter of local law, we respectfully understand that the writ of certiorari should be denied.

Respectfully submitted.

San Juan, Puerto Rico, this 16th day of December, 1982.

Respectfully submitted,

MIGUEL PAGAN
Acting Solicitor General

REINA COLON DE RODRIGUEZ
Assistant Solicitor General

CERTIFICATE OF SERVICE

I hereby certify that on this same date three printed copies of the foregoing Opposition to the Petition for a Writ of Certiorari have been served, by certified mail to Maria Milagros Soto, Esq., Counsel for Petitioner, at her address: Banco Central y Economias, Office 1115, Hato Rey, Puerto Rico, 00917.

San Juan, Puerto Rico, this 16th day of December, 1982.

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